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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 10 (AS)

5 AVRAHAM EISENBERG,

6 Defendant.

Trial

7 -----x
8 New York, N.Y.
9 April 12, 2024
8:52 a.m.

10 Before:

11 HON. ARUN SUBRAMANIAN,

12 District Judge
13 -and a jury-

14 APPEARANCES

15 DAMIAN WILLIAMS,

16 United States Attorney for the
Southern District of New York

17 PETER J. DAVIS

18 THOMAS S. BURNETT

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Attorneys for Defendant

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ASHLEY MARTABANO

21 RILEY SMITH

-and-

22 TALKIN MUCCIGROSSO & ROBERTS, LLP

SANFORD N. TALKIN

23 NOAM B. GREENSPAN

24 Also Present: Brandon Racz, FBI

Ryan Sears, Paralegal Specialist-USAO

25 Jonathan Oshinsky, Paralegal Specialist-USAO

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(Trial resumed; jury not present)

THE COURT: What do we have to take up? I know that the parties apparently have resolved the attorney-client issue. So is it just exhibit 401?

MR. TALKIN: That's right, your Honor. We also, just so the Court knows, we are going to be able to serve that subpoena. I'll get it signed today. That's taken care of itself, as well.

THE COURT: Great.

As to the completeness issue, I think the government requested to be heard on that. So, Mr. Davis, do you want to take that up?

MR. DAVIS: Yes, your Honor, if I may. I'd like to make a couple of points on this particular document.

THE COURT: Can someone put it up on the screen.

MR. DAVIS: Can we pull up Government Exhibit 401, the full exhibit.

THE COURT: While we're waiting, Mr. Talkin, I think in your email you referenced exhibit 109, as well.

MR. TALKIN: Yes.

THE COURT: I may have, but I don't recall this issue coming up with respect to that exhibit when I initially gave my guidance on the objections. Maybe I did. Just refresh my memory on the issue. You don't need to go back and see if we picked it up. I'm happy to address it again if we need to.

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1 MS. MARTABANO: Yes, your Honor. Exhibit 109, they
2 asked a question -- so the other participant in the chat asked
3 a question and Mr. Eisenberg said something to the effect of
4 can't say more or I'm about to release a statement that should
5 address it. We sought to have that statement added in for
6 completeness. It was a Twitter statement. We didn't argue
7 about it. Your Honor just ordered it I think at the start of
8 our hearing on it maybe on Monday.

9 That same statement is referenced in the government's
10 current exhibit 401. We thought it was coming in through 109.
11 They have withdrawn 109 and are not planning to use it. And
12 so, the statement is actually referenced twice in 401 and it's
13 basically Mr. Eisenberg saying, I can't say more than my
14 statement and as referenced in my statement. So we're just
15 seeking to have the statement added in through 401.

16 THE COURT: Thank you.

17 Mr. Davis.

18 MR. DAVIS: Thank you, your Honor. I want to take a
19 step back here because this evidentiary point is a critical one
20 for the government to receive a fair trial in this case. I
21 want to start with some legal principles that I think will set
22 the stage for this current dispute.

23 First, the Tweets themselves, I don't hear any
24 argument from the defense. They are inadmissible hearsay if
25 offered by the defendant. They cannot be offered in the

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1 defendant's case. That's where we're going to start with this.
2 I hear the only reason for supplementing is a Rule 106. On
3 this point, I would point the Court to two opinions that I
4 think are directly controlling here. The first is
5 Judge Rakoff's opinion in *United States v. Lumiere*, which is
6 249 F. Supp. 3d 748, 2017. The second is *United States v.*
7 *Campos*. That's a Second Circuit case reviewing an order and
8 affirming by Judge Caproni.

9 I'll start with just the principle in the Second
10 Circuit case, which is then just fleshed out a little bit.

11 THE COURT: What's the citation?

12 MR. DAVIS: 763 F. App'x 97, and that's a 2019 Second
13 Circuit case.

14 THE COURT: I may have gotten this wrong. 763 --

15 MR. DAVIS: 763 F. App'x 97 is what I have. I have a
16 printed copy, as well.

17 THE COURT: I have it.

18 MR. DAVIS: Thank you, your Honor. On the last page
19 of that -- I'm happy to wait for the Court.

20 THE COURT: Why don't you direct me to the portion --

21 MR. DAVIS: Page 101 is a 106 objection. The Court
22 holds here, the district court rejected *Campos'* assertion that
23 all recordings were one long continuous recording, and goes on
24 to say the government offered its excerpts for a limited
25 purpose, the falsity of the assertion that the fraudulently

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1 obtained cars were for personal rather than business use. In
2 substance, the district court concluded that *Campos* could not
3 use the completeness rule as an end run around the hearsay
4 rule. And then the Court affirms that decision.

5 THE COURT: Got it.

6 MR. DAVIS: So that's the background principle of how
7 106 can't be used as an end run around the hearsay rule.

8 And then here in the Judge Rakoff opinion in 2017 --

9 THE COURT: Can you give me that citation?

10 MR. DAVIS: Yes, your Honor. 249 F. Supp. 3d 748.
11 That's a 2017 opinion. And the relevant page, it starts at
12 *758.

13 THE COURT: Okay.

14 MR. DAVIS: And so, if I can direct the Court to --
15 there's a couple of key portions here. But first, the Court
16 sets the stage that the government introduced portions of a
17 recording to show what Plaford and Lumiere did. Beginning in
18 2017, they mismarked securities held by the credit fund by
19 having -- and then it goes on to describe the conduct. It
20 said, the admitted portions of the recording thus did no more
21 than introduce historical facts about the mechanics and scope
22 of the scheme. By contrast, the portions of the recording that
23 Lumiere argues were improperly excluded are post hoc attempts
24 by Lumiere to minimize his own culpability by explaining that
25 at least some facets of the scheme seem superficially

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1 legitimate. The Court goes on in that to rule that that's not
2 a proper use of the Rule of Completeness.

3 In the next paragraph, it gives an example and says,
4 the legal principle that controls here. Instead, that
5 statement, like all the others Lumiere sought to introduce,
6 offered context only insofar as they represented Lumiere's
7 self-serving attempts to shoehorn after-the-fact justifications
8 for his actions into his descriptions of his actions.

9 And I want to pause there.

10 THE COURT: Got it.

11 MR. DAVIS: Let's turn now to the facts. That's our
12 legal principles. Now let's turn to the facts of what is in
13 dispute here.

14 THE COURT: What's the date of this exhibit?

15 MR. DAVIS: Government Exhibit 401 is a chat from
16 October 20th, 2022. So approximately nine days or so after the
17 attack. And this is -- let's just read aloud my line.

18 Just so the Court is clear, the sender with the last
19 digits ending in 42 -- I think that's 7; is that right? That's
20 the defendant. The sender with ID ending in 026 is another
21 party.

22 THE COURT: Okay.

23 MR. DAVIS: Your Honor, may I point out a couple
24 highlights of this. This is in contrast of the other exhibit,
25 Government Exhibit 109, which I'm not sure the Court -- it

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1 strikes me this morning the defense has represented that the
2 Court ruled on Rule of Completeness for that exhibit, but maybe
3 that's not right.

4 THE COURT: We discussed a number of exhibits, this
5 may have happened, but it just didn't jump out at me because I
6 know this was a big issue that had been raised and I don't
7 recall focusing in on that particular issue. However, that's
8 not to say it didn't happen.

9 MR. DAVIS: Totally understand. I'm not trying to say
10 otherwise. I also don't have a memory as I sit here today, but
11 what I'm prepared to do is do the following:

12 THE COURT: 109's not coming in, so --

13 MR. DAVIS: 109's not coming in, but I can distinguish
14 109 --

15 THE COURT: Forget about 109, we'll just focus on
16 this. So shortly after the time of the alleged offense --

17 MR. DAVIS: He is asked, can you clarify your
18 involvement. And then he says, hi, I cannot comment on the
19 record beyond the existing statement, but I can help you
20 clarify in background. Let me know if that's okay.

21 So then the person agrees to that arrangement where
22 they will have a private off-the-record conversation. And then
23 the next reference, he said, importantly, the sentence says,
24 I'm important in getting the facts straight. The defendant
25 then says, I helped negotiate the settlement, the terms are

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1 agreed, describes those terms. Then says, for the bounty, in
2 quotes, the amount note that the accounts in question were
3 funded with a bit over \$10 million to start. So it's not
4 accurate. He's still currently describing the scheme with
5 important admissions. Then he says, \$35 million is closer to
6 accurate, but I can't give any detailed breakdown or number on
7 the record unfortunately. He talks about open source reporting
8 that says that \$3 million was spent buying on Mango and says
9 you can do the math. He goes on to say, this says two to three
10 million spent on the spot by a Mango advisor. They're just
11 estimating based on volumes. He says, significant capital,
12 \$10 million in collateral deposited in multiple Mango accounts,
13 two to three million to manipulate the underlying spot markets
14 on and off chain.

15 Here's why I'm highlighting these points. The
16 defendant is not denying the conduct in private at all, he is
17 confessing to it here. He is not referring to the statement in
18 order to say, no, that statement, that's the truth, and he is
19 doing the opposite. So to allow the defense, through a Rule of
20 Completeness, to allow them to get in the cover story through
21 this is exactly what these cases stand for the opposite
22 proposition.

23 THE COURT: And in Lumiere, give me the compare and
24 contrast with Lumiere. Were the statements that were put in --
25 I'm seeing this case for the first time, so just help me with

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1 this.

2 MR. DAVIS: Yes, your Honor. So just going back a
3 little bit before. This is what Judge Rakoff describes. The
4 government introduced limited portions of the recording to show
5 what Plaford and Lumiere did beginning in 2011. They mismarked
6 securities held by the credit forum by having budget brokers
7 back up made-up prices that Lumiere gave them. The admitted
8 portions of the recording thus do no more than introduce simple
9 historical facts about the mechanics and scope of the
10 mis-marketing scheme. By contrast, what they're seeking to
11 introduce are post hoc attempts by Lumiere to minimize his own
12 culpability by explaining that at least some facets of the
13 scheme seemed superficially legitimate.

14 That's the comparison, your Honor, and I want to step
15 back for one second when the Court's prepared.

16 (Pause)

17 THE COURT: So the analog is in Lumiere, the portions
18 that were offered by the government included the defendant's
19 characterization of the scheme.

20 MR. DAVIS: Yes, your Honor.

21 THE COURT: Including, for example, "Chris had been
22 mismarking shit since the beginning."

23 MR. DAVIS: Yes, your Honor.

24 THE COURT: So the mere fact that, and to put it in
25 the context of this exhibit, you're saying even if the defense

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1 were to argue that his characterization of the offense in the
2 lines that you cited is coming in, it's not a proper
3 completeness argument to say, well, then he gets to put in his
4 explanation that it's innocent just as in Lumiere.

5 MR. DAVIS: Yes, your Honor. In this chat, he is
6 admitting that what he Tweeted was a cover story. So to allow
7 the defense to admit that would be in furtherance of that cover
8 story. That is why the Court holds that the context that would
9 be offered is a self-serving attempt to shoehorn after-the-fact
10 justifications for his actions into his descriptions of his
11 actions. That's exactly what the Court's looking at.

12 To put a finer point on it, your Honor, in defense's
13 opening at page 92 of the transcript, the defense opened on,
14 "the defendant engaged executed winning trades." That's what
15 he said. That's what the defense said. They should not be
16 able to introduce straight-up hearsay to support that. They
17 made that choice to make that call, but they do not have
18 admissible evidence to support it.

19 THE COURT: Okay. Thank you.

20 Mr. Talkin or Ms. Martabano, whoever is going to
21 handle this.

22 MR. TALKIN: Your Honor, I'll take this. A couple
23 important factual issues.

24 First of all, since those cases, 106 – I'm just
25 pulling it up – has been amended. Then, pertinent part, at the

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1 end, it says, the adverse party may do so over hearsay's
2 objection, and that's in reference to fairness.

3 Second of all, the critical line in this, the
4 significant capital and semicolon, \$10 million in collateral, I
5 think is the second to bottom line there, your Honor. That is
6 Mr. Eisenberg quoting an article by an individual known as
7 @Austerity_Sucks, who was very involved in Mango. It's taken
8 word for word. Those are not his own words. It's taken word
9 for word from an article --

10 THE COURT: Take a step back. Your sole objection to
11 the introduction of exhibit 401 is on Rule of Completeness
12 grounds; right?

13 MR. TALKIN: Well, I think we're discussing a separate
14 issue here. The reason to get -- there's two issues, I guess,
15 that have arisen. One, Rule of Completeness. If you want me
16 to deal with that first, I'll deal with that first, but the
17 second, and I think it's related to this because the Rule of
18 Completeness is they're attributing statements to him that he
19 didn't even make. And based on that and based on their
20 attributing within -- in other words, they're making
21 attributions to his statements without letting the statements
22 that he's making be explained, and the explanation lies in
23 those Tweets. Excuse me. In the statements that happened to
24 be in the Tweets. And it happens not once, but twice.

25 THE COURT: I'm losing you a little bit. You're

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1 saying that there are quotes that are from another source?

2 MR. TALKIN: Correct.

3 THE COURT: Which lines in 401 are those quotes?

4 MR. TALKIN: It's a quote, it's the second to last
5 line.

6 MS. MARTABANO: Your Honor --

7 MR. TALKIN: That's the Tweet --

8 MS. MARTABANO: So in line 20, there's a link.

9 THE COURT: Yes.

10 MS. MARTABANO: The government does not seek to offer
11 that link, but, in fact, that link is the source of the quote
12 that is in the significant capital quote. So they're seeking
13 to put in evidence and suggest that that is a statement
14 affirmatively made by our client when, in fact, that statement
15 is a literal copy-and-paste from the article that is linked in
16 line 20.

17 On top of that, his only statement in response to
18 "what can you comment on that" is the Tweet that we are seeking
19 to admit. So we were not seeking to admit that
20 @Austerity_Sucks article because it was not until today that I
21 understood that the government was going to be saying that that
22 was literally attributable to Mr. Eisenberg based on their
23 proffer right now.

24 So they had offered this in, they never sought to
25 include the article, and they had, at least not as far as I can

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1 recall, never said to us that the significant capital line was
2 actually going to be portrayed as something Mr. Eisenberg said
3 and meant when it's clear that he says, you know, open source
4 reporting says this, a link would be handy. He provides that
5 link and says, this says two to three million spent on this,
6 they're just estimating based on volumes. So all three of
7 those messages relate to the article that the government has
8 not sought to include. And again, we weren't seeking to
9 include that because I didn't realize they were going to argue
10 that that line was attributable --

11 THE COURT: So you're making two arguments. One is a
12 402, 403 argument, and you're separately making at least one
13 completeness argument?

14 MS. MARTABANO: Yes, your Honor.

15 THE COURT: You're making two completeness arguments.
16 Meaning, are you saying there's two things that you would add?
17 One would be the Tweet. It doesn't need to be his statement.

18 MS. MARTABANO: Correct. I believe we had originally
19 written on this statement and we agreed to withdraw it based on
20 our discussions.

21 THE COURT: So there's two things you would add for
22 Rule of Completeness grounds, one is Mr. Eisenberg's Tweet, the
23 other is the @Austerity_Sucks Tweet.

24 MS. MARTABANO: I think that's right if they are going
25 to seek to maintain that that's a quote made by Mr. Eisenberg

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1 as opposed to just a copy and paste.

2 THE COURT: The 402, 403 argument is that it's not his
3 statement?

4 MS. MARTABANO: Correct.

5 THE COURT: It's not that it's not relevant if it was
6 his statement?

7 MS. MARTABANO: Correct. But it's not his statement.
8 Based on Mr. Davis' argument just now, they're seeking to claim
9 that it is and it's an admission by him, which, again, I
10 actually didn't understand that that was going to be their
11 position until just now. So I think that that also weighs even
12 more so in favor of including his actual statement.

13 THE COURT: Mr. Davis, just on that limited point, the
14 one about this being a quote from that Tweet.

15 MR. DAVIS: Yes. On that point, our understanding was
16 the defense was not seeking to introduce that second article.

17 And second, this idea that it's not his statement, he
18 adopts this statement. He is the person who writes these
19 words. There is no dispute about that. If they want to argue
20 to the jury that somehow this is a quote, they need evidence
21 for it. He adopts it. If they want to say, oh, no, he was
22 just quoting it, he was just quoting it, then they can, but
23 that's a jury argument. He adopted the word "manipulate."
24 That's his word.

25 THE COURT: If I agree with you on the 402, 403

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1 argument, you're not opposing their putting in the Tweet?

2 MR. DAVIS: The Tweet -- these are two separate
3 issues.

4 THE COURT: No. The @Austerity_Sucks Tweet. You said
5 it's a jury argument. So if Ms. Martabano or anyone else on
6 the defense side wants to say that he was quoting something,
7 they need to be able to present the thing --

8 MR. DAVIS: Happy for them to say he was quoting the
9 article, for sure. Let them argue that to the jury.

10 THE COURT: They got to show the thing.

11 MR. DAVIS: So happy to agree what part of that
12 article should come in under Rule of Completeness. We had
13 previously understood they didn't do this. And for them to say
14 when the word "manipulate" is used in this document is just
15 Mr. Eisenberg direct quoting, when he used quotes in other
16 contexts, didn't use it there, feel free to argue to that.

17 THE COURT: So the 402, 403 objection is overruled. I
18 don't think it matters whether an individual is quoting someone
19 else. As Mr. Davis points out, he's at the very least adopting
20 a quote and then relaying it to another person as a statement.
21 And so, I don't think the quoting aspect of it means that it's
22 not admissible as a potential statement by the defendant. So I
23 don't think that distinction negates the admissibility of those
24 lines. Any remaining arguments that would be made go to the
25 weight that should be attributed to those statements, which I'm

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1 sure the defense will point out.

2 As to that 106 completeness issue, you are free to put
3 in that that Tweet, whatever portion of that Tweet reflects
4 those statements so that you can present to the jury fairly
5 that Mr. Eisenberg was quoting from another Tweet. And so, you
6 can certainly do that. I think that's a fair completeness
7 argument that you are making.

8 So that resolves those two issues.

9 Now we have the remaining issue about Mr. Eisenberg's
10 Tweet.

11 MS. MARTABANO: Yes, your Honor.

12 THE COURT: Let's say for the moment -- let me ask
13 you, Mr. Davis, the difference between this case and Lumiere
14 would be that there are actually references in this document to
15 this statement. And so, if he's saying, "well, I can't comment
16 because I've got this statement," that's at least a little bit
17 misleading or yearning for context, the jury is going to wonder
18 what that statement is. Why are you even putting in this part
19 of the document? That's my question. If we're just focusing
20 on this end of the document, why don't you put in the end of
21 the --

22 MR. DAVIS: We're happy to cut that part of the
23 document.

24 THE COURT: So cut that part of the document, because
25 I think that at least addresses part of this.

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1 So which lines do you need to put in?

2 MR. DAVIS: We can start at line 12.

3 THE COURT: Well, you can't start at line 12.

4 MR. DAVIS: I'm sorry. That's wrong. 13 is where we
5 would want to start, your Honor.

6 THE COURT: Now, Ms. Martabano, they're putting in 13
7 to 24, then take it from there.

8 MS. MARTABANO: Yes, your Honor. Your Honor has
9 actually already ruled on this because I believe that's exactly
10 what they initially sought to include. We moved on Rule of
11 Completeness grounds to include the earlier Tweets in this
12 because it provides necessary context, talking about your
13 involvement in the refund and the settlement that you helped
14 negotiate. Your Honor agreed to add those in as proper context
15 under Rule 106. And so, that's how we landed with the current
16 version of 401.

17 And I think our position would be that cutting, again,
18 for the reasons we argued to get the original top of this chat
19 added, absolutely provides context to what he's talking about
20 here. I think, again, they always wanted it to just be for the
21 bounty amount, that the accounts in question would be funded a
22 bit over \$100 million.

23 In fact, the top of the Tweet, at the top of the chat,
24 exhibit 401, is literally Mr. Eisenberg explaining some of his
25 math and providing in context. It's very important that this

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1 was a refund to users. The government doesn't like that fact,
2 but the reality is, it is a refund to users that they are
3 talking about and that is very important for the jury to
4 understand. That is why we sought to have that portion added
5 because it's literally discussing the math that they're seeking
6 to admit, and it explains what that math is about. So that's
7 why we wanted the top in.

8 And then we think, obviously, the full context is I
9 helped negotiate this settlement. Even though they're now
10 saying you're free to put in the fact that this is a direct
11 quote from someone else, they're still seeking to argue that
12 Mr. Eisenberg adopted that quote.

13 And to the extent the jury wants to accept that he
14 adopted that quote, the jury should be aware of what his full
15 position was. That is absolutely context to how and why he was
16 then discussing these other articles. I don't think it's fair
17 for the government to say, oh, he adopted someone else's quote,
18 but we're not going to let you put in what he said himself,
19 which is referenced in two places in this exhibit.

20 THE COURT: Do you have the Tweet?

21 MR. DAVIS: I have a copy, your Honor. May I
22 approach?

23 THE COURT: Yes, you may.

24 MR. DAVIS: It's my only copy, so hope I get it back.

25 THE COURT: So this whole thing is the Tweet?

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1 MR. DAVIS: That's what they want to put in.

2 THE COURT: Okay. Ms. Martabano, as between putting
3 in just lines 13 through 24 or the full document without
4 Mr. Eisenberg's statement, which would the defense prefer?

5 MS. MARTABANO: As between 13 to 24 and the whole --

6 THE COURT: And in both of those situations, the lines
7 that you would want to put in from the @Austerity_Sucks Tweet
8 would come in, because I do believe that would be required
9 under the Rule of Completeness.

10 MS. MARTABANO: I think we would prefer the full 401
11 as currently in to just the limited, because I think the
12 limited is even more misleading.

13 THE COURT: Understood.

14 And who is this going to come in through?

15 MR. DAVIS: Today's witness.

16 THE COURT: So we have Dr. Mordecai is going to finish
17 up. Who's next?

18 MR. DAVIS: We'll have Mr. Casey and Mr. Tonkin, and
19 then I think we'll end the day with the summary witness.

20 THE COURT: You're going to end the day with the
21 witness --

22 MR. DAVIS: Yes, your Honor. That's right.

23 THE COURT: Understood.

24 I've heard the parties' arguments. I want to think
25 about this a bit, I think we have a little time.

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1 I appreciate it, Mr. Davis. Do you need this back?

2 MR. DAVIS: I do, your Honor. But may I make one
3 point before we break on this issue?

4 THE COURT: Yes.

5 MR. DAVIS: On the second Tweet, that is actually an
6 article, the @Austerity_Sucks article, it's a long article, so
7 we can work out redactions. And so, I understand the defense
8 wants to argue this was copied and pasted, so we're happy to
9 come up with a document that shows this is an article.

10 THE COURT: That should be easy, title, and --

11 MR. DAVIS: Yeah.

12 THE COURT: Anything else before we bring the jury in?
13 Restroom break?

14 MR. DAVIS: Is that okay, your Honor?

15 THE COURT: Yes.

16 (Recess)

17 Let's get Mr. Mordecai back on the stand.

18 (Witness present)

19 Good morning. Welcome back.

20 THE WITNESS: Thank you.

21 MR. KLEIN: Your Honor, our client stepped out for one
22 second.

23 THE COURT: So we will wait for one second.

24 Ms. Martabano, given you have some time here, if there
25 is a case that you want to submit to the Court relevant to this

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1 106 issue, I'm happy to receive it.

2 MS. MARTABANO: Thank you, your Honor.

3 MR. DAVIS: Your Honor, I would also point the Court
4 to our letter – I think it was over the weekend – on this issue
5 outlining the case law. I forget at this point what day that
6 was --

7 THE COURT: No, I've got it.

8 MR. DAVIS: Thank you, your Honor.

9 (Continued on next page)

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Mordecai - Cross

1 (Jury present)

2 THE COURT: Welcome back, members of the jury. I am
3 pleased to inform you that we are ahead of schedule. We're
4 starting late, we're starting late, but we're still ahead of
5 schedule. If only that's the way it always worked, but at
6 least here, that's how it's working. And that reflects the
7 diligent efforts of the parties on both sides and who
8 appreciates your service here and wants to make things as
9 streamlined as possible.

10 With that, Dr. Mordecai, you understand you're still
11 under oath?

12 THE WITNESS: I do, sir.

13 THE COURT: All right. Mr. Greenspan, you may
14 proceed.

15 MR. GREENSPAN: Thank you, your Honor.

16 DAVID K. A. MORDECAI, resumed.

17 CROSS-EXAMINATION CONTINUED

18 BY MR. GREENSPAN:

19 Q. Good morning, Dr. Mordecai.

20 A. Good morning, sir.

21 MR. GREENSPAN: Can you pull up what's been marked
22 DX 50 and just show it to the witness, please.

23 Your Honor, I move this in via stipulation with the
24 government.

25 THE COURT: Any objection?

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Mordecai - Cross

1 MS. HUANG: No objection, your Honor.

2 THE COURT: DX 50 will be admitted.

3 (Defendant's Exhibit 50 received in evidence)

4 MR. GREENSPAN: You can publish that. And then we can
5 take it down. Thank you.

6 Q. Dr. Mordecai, you started at the beginning of your
7 testimony on direct just explaining the mechanics of the Mango
8 perpetual. Do you remember that?

9 A. I remember discussing the -- how the MNGO-PERP contracts
10 result in either a long or short leverage position.

11 MR. GREENSPAN: Mr. Smith, can we pull up government
12 demonstrative 1300, please. And this can be shown to the jury.

13 Q. Do you see what's on your screen, Dr. Mordecai?

14 A. I do.

15 Q. So there's a point at which the blue line crosses this
16 black line in the middle. Do you see that?

17 A. Yes. Correct.

18 Q. .038 or 38 cents; is that right?

19 A. Correct. No, 3.8 cents.

20 Q. You're right, 3.8 cents. Thanks for the clarification.

21 That point, I think it was circled on the direct
22 examination. Did you refer to that as the reference price or
23 the index price? What was the term you used?

24 A. I called it a break even point. That was the point at
25 which the positions were originally executed or entered into.

04CCeisl

Mordecai - Cross

1 Q. If I refer to that as the "reference price," will you
2 understand what I'm saying?

3 A. I would prefer we not use that term because "reference
4 price" has a lot of meanings in many derivatives contexts and
5 I've never used it in the context of this case in that way.

6 Q. You would like to use the word "break even point"?

7 A. Why not just call it the initial price, the initial price
8 of the contract?

9 Q. That's fine. Let's do "initial price." Okay.

10 The initial price of the contract here is 3.8 cents.
11 Okay?

12 A. Correct.

13 MR. GREENSPAN: You can take that down, Mr. Smith.

14 Q. So let's do a hypothetical to sort of walk through the way
15 the Mango perpetual works. So let's say I buy a \$100 Mango
16 perpetual, and this initial price is 10 cents. Okay? You got
17 me?

18 A. So you're saying -- what does the \$100 relate to?

19 Q. \$100 of contracts of Mango perpetuals at an initial price
20 of 10 cents. Do you follow?

21 A. First of all, do you mean that it's 10 cents of the MNGO
22 token price, one for one relative to U.S. dollar coin price of
23 a dollar?

24 Q. We just defined the word "initial price." The initial
25 price, 10 cents.

04CCeisl

Mordecai - Cross

1 A. I'm just trying to be helpful. Okay. So you said you
2 bought a \$100 notional; correct?

3 Q. Correct.

4 A. That \$100 notional is of a ratio between -- is it 10 cents
5 of MNGO per dollar, U.S. dollar coin for a total notional
6 exposure of \$100?

7 Q. Correct.

8 A. Okay.

9 Q. Okay. Now the Mango perpetual allows leverage; right?

10 A. The leverage is built into the very thing we just talked
11 about.

12 Q. Correct.

13 A. To some degree, aside from a structural leverage in the
14 pledging of any margin --

15 Q. Dr. Mordecai, please, just answer my questions. Okay?

16 A. I try --

17 Q. I just asked you -- hold on, please.

18 The Mango perpetual allows for leverage; right?

19 A. I'm going to try to answer as completely and succinctly as
20 I can.

21 The MNGO instrument you're calling the Mango perpetual
22 has its own intrinsic or inherent leverage through the
23 relations we just talked about. I'm saying that's aside from
24 additional leverage that may come through a margining
25 arrangement.

04CCeisl

Mordecai - Cross

1 Q. I'm not interested in the additional leverage through a
2 margin arrangement, I'm just interested in how it works. And
3 that leverage is at four times; correct?

4 A. The structural leverage is four times, which is why I
5 brought that up.

6 Q. So the structural leverage is four times --

7 A. You asked me about the inherent leverage in the instrument.
8 Those are two separate things. They both are relevant here and
9 that's why I don't want to confuse the jury or confuse the
10 Court by mixing and matching in a way that doesn't make any
11 sense.

12 Q. So the profits and losses that you described yesterday,
13 they're multiplied by that factor of four; correct?

14 A. The structural leverage allowed through margining is a
15 factor of four. The inherent leverage in the price
16 relationship between the numerator and the denominator of the
17 contract is additional inherent leverage. And that's not --
18 that's on top of the four. That's an additional source of
19 leverage called risk-based leverage, which was a focus of my
20 dissertation.

21 Q. So if I've got my \$100 PERP with my 10-cent breakeven
22 price, the price of Mango has now moved from 10 cents to
23 2 cents, what's my profit or loss?

24 A. So you're talking about a short position?

25 Q. I'm sorry. I'm talking about a long position and it's

O4CCeisl

Mordecai - Cross

1 moved from 10 cents to 2 cents. What is my profit or loss?

2 A. If you have a long position at 10 cents and you've lost
3 80 percent of that 10 cents; right?

4 Q. Right.

5 A. You now have that 80-percent loss multiplied time the
6 additional structural leverage of four to one.

7 Q. Right. So what's the total?

8 A. You're looking at a loss on its own. If you don't have an
9 offsetting account, which is very important to the facts in
10 this case, you have --

11 Q. I'm not asking you about an offsetting account. Let's
12 stick to the hypo. What is the loss?

13 A. The loss in isolation for just this one account is
14 80 percent of the change, the difference in that ratio from
15 10 cents per dollar to 2 cents per dollar; right?

16 Q. Right.

17 A. So that's 6 cents per dollar; right?

18 Q. No. It started out at 10 cents.

19 A. It went to 2. I'm sorry. 8 cents per dollar loss.

20 Q. Right.

21 A. Multiplied through the \$100 notional size, times whatever
22 external margin there is, which is four to one.

23 Q. So the total loss is \$320, right? 80 times 4?

24 A. That's correct.

25 Q. So my initial position was at \$100, I've lost \$320, so now

O4CCeisl

Mordecai - Cross

1 my P&L is negative \$220; right?

2 A. That's one way to look at it, yeah.

3 Q. So now, I don't think you discussed this concept on direct,
4 but are you familiar with the concept of liquidation on Mango
5 Markets?

6 A. I'm familiar with liquidation generally and I have some
7 familiarity with the fact that there was a liquidation policy
8 with regard to Mango Markets.

9 Q. So given that familiarity, fair to say that I'm now open to
10 the possibility of liquidation with my negative \$220 position
11 in P&L?

12 A. Ordinarily, one would be exposed to a liquidation event if
13 it occurs.

14 Q. If I was fully liquidated, how much would I lose?

15 A. You would crystalize in that one account barring the other
16 account, you'd crystalize the loss in that account.

17 Q. And I'd lose \$100; right? I'd put in \$100, and if I'm
18 fully liquidated, I lose all \$100; right?

19 A. Well, hold on a second. You're liquidated with, you said
20 an 80-percent loss; correct?

21 Q. Correct.

22 A. So then that means there is something left over in just
23 that isolated account, given the fact you want me to talk about
24 just that isolated account.

25 Q. If I'm fully liquidated at my \$220 P&L, what's left over?

04CCeisl

Mordecai - Cross

1 A. As it relates to this case, I'd have to look at both
2 accounts --

3 Q. No, there's only one account. This is a hypothetical, you
4 understand? We'll get to the accounts.

5 A. Right.

6 Q. Which were more than \$100, they were at \$5 million. I
7 think it should be clear I'm talking about a hypothetical with
8 \$100. I want to explain to the jury how it works and then we
9 can come back.

10 So let's just assume one account.

11 A. Yeah.

12 Q. And I think if you need me to repeat it, we can go back
13 through the steps, but I think you know how we got to a
14 negative \$220 loss?

15 A. You had a \$100 notional exposure?

16 Q. Right.

17 A. You've asked me to ignore the four-to-one leverage through
18 margin; correct?

19 Q. I'm asking you just about the four-to-one leverage inherent
20 in the Mango Markets perpetual, the Mango perpetual.

21 A. That is based on the structural leverage that's being
22 permitted through the margining.

23 Q. We just talked about, you agreed with me that a loss of \$80
24 would have the four times leverage, and it would be a loss of
25 \$320. Do you remember that testimony?

O4CCeisl

Mordecai - Cross

1 A. I remember saying there's inherent risk-based leverage tied
2 to the relationship and the price movements with that exposure,
3 and then I say there may also be structural leverage based on
4 the amount margin you put up relative to what the actual
5 exposure is.

6 Q. Let's just stick to the facts that I've given you. Okay?

7 A. Okay.

8 Q. So given those facts, we've lost \$320 and it's a negative
9 P&L of \$220; right?

10 A. I agree with the arithmetic as you have framed this
11 particular hypothetical.

12 Q. Great. That's all I'm asking.

13 So now, given that arithmetic and given what you know
14 about liquidation on Mango Markets, if I get liquidated to the
15 fullest extent the liquidation can happen, how much is left?

16 A. It's very difficult for me to answer the hypothetical as
17 you're asking because there's always the arithmetic, but it's
18 so divorced from the actuality, the reality of the facts in the
19 case.

20 Q. I'm not asking about the facts in the case, I'm asking only
21 about how Mango Markets works.

22 A. I can't divorce that from the facts of the case, sir.

23 Q. You can't come up with a hypothetical and answer questions
24 like that without --

25 A. No, I can't tell a lie. I swore to --

04CCeisl

Mordecai - Cross

1 THE COURT: No, there's no telling anyone a lie. If
2 you can answer the question --

3 Q. Look, you're telling me --

4 THE COURT: Mr. Greenspan.

5 MR. GREENSPAN: I'm sorry, your Honor.

6 THE COURT: If you can answer, just give the answer.
7 A. As I sit here, it is very difficult for me to answer that
8 question as you've posed it.

9 Q. But I think you'd agree with me that I can't lose more than
10 \$100 that's in my account; right?

11 A. Generally speaking and my knowledge of institution --
12 institutions, I don't actually agree with you. You can lose
13 more because you can remain on the hook for additional losses.

14 Q. Where in the Mango Markets documentation do you get that
15 position? What's your basis for that?

16 A. My basis for that is my knowledge of derivative markets
17 across many, many different markets.

18 Q. I just want to know where, based on what you know about
19 Mango Markets and what documents in Mango Markets have you
20 reviewed that tells you you can lose more than the money you
21 put in initially.

22 A. I would need to go back and research the Mango Markets
23 documentation. There are other reasons I think that this is
24 still applicable to Mango Markets, and I can share them if
25 you'd like me to.

O4CCeis1

Mordecai - Cross

1 Q. Sure. Go ahead.

2 A. The fact that there was a negotiation afterwards between
3 the parties about withdrawals suggests to me that there was
4 still a notion --

5 Q. Whoa. Whoa. Whoa. Again, I think you're talking about
6 facts that have nothing to do with my hypothetical.

7 A. Okay. So, to the extent that there are facts of the case
8 that are not about your hypothetical, again, really aren't for
9 me to answer this question.

10 Q. You can't answer a question about whether a \$100 position
11 can be liquidated over \$100? Is that your testimony?

12 A. My testimony is I'm not going to speculate with bit and
13 piece facts about something that I take very seriously and that
14 I do for a living while under oath.

15 Q. I appreciate that you take it seriously. I do, too.

16 Is it the case you don't know how Mango Markets works?

17 A. That is not case. I am not going to create a hypothetical
18 that would mischaracterize or misconstrue how it works in
19 actuality, particularly as it relates to the facts of this
20 case.

21 Q. So what is the total amount that someone can lose, if their
22 initial stake is X, can they lose 2X, 3X? How does that work?

23 A. In terms of these types of contracts, so the perpetual
24 forwards or perpetual futures are basically what one calls
25 symmetrical loss. You've got unlimited loss on either side or

O4CCeis1

Mordecai - Cross

1 unlimited gain on either side. Because these are not options,
2 you could lose far more than your investment. You could be on
3 the hook for far more than your investment. And that is, in
4 fact, the way it works. Anyone that's even watched trading
5 places --

6 Q. No. No I'm not interested in trading places, I'm
7 interested how this works. We're going to be here all day if
8 we start talking about things that don't have to do with the
9 case. Okay? So please just answer my questions. Is that
10 okay?

11 A. I will answer your question to the best of my ability given
12 the question you're asking.

13 Q. So, again, returning to the scenario, I have a negative
14 \$220 balance, I only put in \$100. So what's the mechanism by
15 which I'm obligated to pay the extra \$120 that I didn't put in?
16 Is there a collections agency that comes to my house? How does
17 that work?

18 A. Well, I can tell you how it works in general.

19 Q. No. No. No. The case is about Mango Markets, you've been
20 put up as an expert on Mango Markets, you've been qualified to
21 do that. I think the jury needs to understand how Mango
22 Markets works.

23 So, my question to you is: On Mango Markets with a
24 Mango perpetual, if there's a negative P&L, let's say it's
25 negative \$220, and the initial investment, the only investment

O4CCeisl

Mordecai - Cross

1 in the account, forget about other accounts, you've heard this
2 account is \$100, after that \$100 is liquidated, what's the
3 mechanism by which Mango Markets makes me pay another 120?

4 A. For me to answer that question, I would have had to study
5 that as part of my scope of assignment, and because it was not
6 part of my scope of assignment, I'm not going to speculate as I
7 sit here today.

8 Q. Fair enough. So that's just beyond the scope of what you
9 know about Mango Markets; is that right?

10 A. It's beyond the scope of what I've been asked to analyze
11 and, therefore, I would not begin to piecemeal and provide ad
12 hoc points of view outside the scope of my assignment. I would
13 need to do more analysis.

14 MR. GREENSPAN: Mr. Smith, could we put up government
15 demonstrative 1302. This is in evidence. It can be shown to
16 the jury.

17 Q. So I think you described this and another exhibit as being
18 mirrors of each other, like looking into a lake. Do you
19 remember that?

20 A. I do.

21 Q. So isn't it fair to say that this assumes that for every
22 profit in a long position, the offsetting short position ends
23 up having to pay off, as you say, the exact same amount?

24 A. Payoff is simply the -- so, could you repeat the question.
25 I want to give you a yes or no.

04CCeisl

Mordecai - Cross

1 Q. Let's define the term. What is payoff? I think you wanted
2 to define that.

3 A. Payoff, as it's on this exhibit, is basically the profit
4 and loss accruing to a respective account.

5 Q. In other exhibits, you used the terms "profit" and "loss,"
6 but here you use the term "payoff." Why the difference?

7 A. I think this is just the way in which the exhibit was
8 produced. There is not a difference here in terms of a U.S. --
9 in my understanding, there's no difference here between the
10 U.S. dollar coin payoff in this graph and the profit and loss
11 generally speaking or exceptionally speaking as labeled in the
12 other graph.

13 Q. You'd agree with me that "payoff," as a lay term, means
14 something that you have to actually pay; right?

15 A. Not necessarily. You'll find this term in a textbook where
16 it doesn't necessarily mean that. And I don't mean --

17 Q. I think I asked you as a lay term, and maybe you don't know
18 what it means as a lay term, but as a lay term, a "payoff"
19 means something you have to pay off; right?

20 A. In the context of general use, terms like "payoff" have
21 many different interpretations based on context, which is why I
22 do tend to -- I shy away from them often. As I said yesterday
23 when you were asking me a couple questions, this was a way of
24 trying to be intuitive on this graph.

25 Q. So you think that the word "payoff," which means profit and

O4CCeisl

Mordecai - Cross

1 loss and is used differently on other graphs, is more intuitive
2 than just saying "profit and loss" here?

3 A. I'm not saying it's more intuitive or less. That
4 mischaracterizes my last answer. I just said this is an
5 intuitive way to describe what I also called wins and losses or
6 gains and losses accruing to each of these two accounts.

7 Q. But gains and losses, and what is reflected in account I
8 think we just covered, can be different than what somebody
9 actually ends up having to pay; right?

10 A. There are many different details, mechanics that are
11 related to what ultimately ends up becoming an obligation.
12 It's very important it be considered in the context of the
13 facts and circumstances, which is why I was reluctant to go and
14 overspeculate or surmise on your hypothetical.

15 Q. Well, this is your chart and this is the word you used, and
16 you used the word "payoff," and you have it reflecting a payoff
17 that's exactly even on the short and the long positions, and
18 you just testified to me that you don't know if somebody has a
19 negative position, if that would actually be collected.

20 So isn't it possible that this chart is misleading?

21 A. What I think is your questions are misleading. I think the
22 chart explains what it's intended to explain.

23 Q. Let's go back to it. So you said if that \$100 had a \$320
24 loss, and so it incurred a negative \$220 profit and loss, you
25 didn't know if you'd only lose \$100 that would actually have to

O4CCeisl

Mordecai - Cross

1 be paid or if there was some mechanism for collecting the whole
2 thing, right, that was beyond the scope of your examination.

3 Do you remember that?

4 A. In this particular assignment for this case, I was not --

5 Q. Do you remember the testimony? That's the question.

6 A. I remember.

7 Q. I need you to answer my questions.

8 A. I remember saying something to that effect, yes.

9 Q. Thank you.

10 So, you don't know if -- let's say because there's no
11 numbers on the payoff column, let's say we had the same
12 hypothetical, and in that hypothetical, there's a short side
13 that made \$320; right?

14 A. Could you repeat the question.

15 Q. Yes. Do you remember there was a negative profit and loss
16 on the long side of negative \$320? You remember that?

17 A. I do.

18 Q. And so, on the short side, there was a profit, a win as you
19 called it, of \$320; right?

20 A. And they're offsetting or they're not quite offsetting?

21 Q. They're offsetting, there's a trade, there's a short side
22 and a long side. The long side has a loss of \$320 profit and
23 loss.

24 A. Okay.

25 Q. The short side would therefore have a gain of \$320 of

04CCeisl

Mordecai - Cross

1 profit; right?

2 A. That's pretty much identical to what I was describing.

3 Q. Yeah, it is identical to what you're describing. But the
4 other part of what you're describing is you don't know -- I
5 mean, we do know that the person who has a profit of \$320, in
6 this case, the short side would be able to get \$320; right?

7 A. Could you repeat the question.

8 Q. Yes. The \$320 profit, remember, on the short side; right?
9 You follow?

10 A. Okay.

11 Q. That person is owed \$320; right?

12 A. To the extent that there's a gain in the short account,
13 that account is entitled to, at some point, based on the
14 mechanics of the platform or the trading venue, if all the
15 things are met, all the requirements are met to harvest,
16 attempt to harvest the gain, whether that is an actual
17 harvesting of a gain or just simply temporary borrows a
18 different question.

19 Q. Well, can't that short side that has a gain of \$320, can't
20 that short side withdraw that gain as profit, putting
21 everything else, putting borrows aside?

22 A. Not necessarily.

23 Q. Why not, why could a position that has a profit not
24 withdraw its profit?

25 A. I could very easily explain that, since this is a

O4CCeis1

Mordecai - Cross

1 hypothetical, with regard to a home loan. I could see
2 appreciation in my house, I could take out an equity line on
3 that appreciation in that house, I can withdraw those funds and
4 spend them, but even though I have the paper profit because of
5 the appreciation gain on my house, those funds are not free and
6 clear, they still have a relationship to the original
7 collateral value that is being advanced against the profit --
8 increased profitability, increased profit of that asset.

9 Q. Okay. So you're saying you need to leave some collateral?
10 Is that what you're saying, in the position?

11 A. I'm saying that withdrawing against a collateral is not the
12 same thing as completing a trade. When you complete a trade
13 and you collapse and close everything out, what's then left
14 over is called the residual value is your ultimate terminal
15 profit. What you described, there is no terminal profit, yet,
16 I'm just withdrawing against an increased collateral value.

17 Q. Let's get to the terminal profit. So you've got a \$320
18 P&L; right?

19 A. In your hypothetical.

20 Q. In my hypothetical on the short side. Okay. Can you
21 accept that?

22 A. I will accept that for the purpose of your hypothetical.

23 Q. Perfect. Now, I want to withdraw some or all of my \$320;
24 right? How much can I withdraw as profit, not as a borrow, as
25 profit?

04CCeis1

Mordecai - Cross

1 A. It's a borrow based on an increased size that's referred to
2 as profit on the P&L. This is why yesterday I said stop
3 calling it money. It's a paper profit. It's not money until
4 you complete all legs of the trade and collapse the trade down,
5 and I haven't seen any evidence of that in my review of this,
6 which is why --

7 Q. Are you saying that I can't settle the position without
8 closing the contract?

9 A. I am saying that, in my experience, in my 40 years of
10 experience, the settling of the position requires all legs of
11 the trade to have been closed. That's what's called covering
12 the position, at which point, what's left over after all the
13 leverage and everything else is done, what's left over is your
14 free and clear profit. I've seen no evidence of that in this
15 case.

16 Q. That's your testimony of how it works on Mango Markets with
17 Mango Markets perpetuals or the Mango perpetual?

18 A. That's my testimony of how, in my experience, it works with
19 any exotic instruments, derivatives, spot leverage trades, and
20 my knowledge of this --

21 Q. That includes the perpetual, because that's what we're
22 talking about. That's all I need to know.

23 A. In my analysis of this, informed by my background, I would
24 expect the exact same thing to apply here.

25 MR. GREENSPAN: Mr. Smith, can we put up Government

O4CCeisl

Mordecai - Cross

1 Exhibit 1011. This is in evidence. Let's go to page 113.

2 Actually, let's start with page 1.

3 Q. Have you reviewed this document? And if you want, we can
4 scroll through some pages.

5 A. I don't know if I've reviewed this document.

6 Q. You don't know. Would it be helpful to look at more pages
7 or --

8 A. It would be helpful to look at more pages.

9 MR. GREENSPAN: Can we look at the next page. Let's
10 go, next page --

11 A. Could I take a minute to address what's on the page?

12 Q. Of course. Feel free to page.

13 (Continued on next page)

O4AAAEIS2

Dr. Mordecai - Cross

1 MR. GREENSPAN: If we could go to the next page?

2 A. This is not a document that I recall reviewing although
3 many of the concept and principles mentioned in first few pages
4 I am familiar with.

5 Q. You don't recall if you've reviewed this document?

6 A. No.

7 MR. GREENSPAN: Mr. Smith, could we go to page 113.

8 (Pause)

9 MR. GREENSPAN: Take a moment to review this and let
10 me know when you are ready.

11 (Pause)

12 THE WITNESS: I saw that.

13 Q. Have you reviewed this before?

14 A. I have not.

15 Q. Okay. So Mango Markets allows one, a perp to settle the
16 PNL of this perp and move the profit or loss from the perp into
17 their USDC token balance; do you see that?

18 A. I do.

19 Q. So a Mango Markets user who owns a perp position can settle
20 if they want, right?

21 A. That is not how I would interpret this based on my
22 experience. And given the fact that I've not reviewed the
23 entire docket, I don't know if it's appropriate to come to that
24 conclusion. And I can explain why if you'd like me to.

25 Q. Sure. Go ahead.

O4AAAEIS2

Dr. Mordecai - Cross

1 A. First of all, back office settled and reconciliation
2 occurs. That does not necessarily mean you've completely wound
3 the trade that means that every -- settle that's why there's
4 a -- called in traditional mark. All that means is you are
5 settling PNL with regard to the mark on this position at this
6 particular point in time then there's been some kind of
7 transaction or transfer to some other ledger, some other
8 account but that is not -- Actually, what this would mean in my
9 opinion out of context and particularly because the first two
10 pages you showed me talk about cross collateralization and
11 cross default which is something they've worked with since
12 1983, so I do not think that this thing, take out isolation
13 means he what you are suggesting it means I were to go through
14 a document and identify it properly.

15 (Pause)

16 Q. Dr. Mordecai, coming back to the notion of settlement, can
17 a Mango Markets user settle whenever they want?

18 A. Settle what?

19 Q. Settle their PNL of the perpetual. Can they settle
20 whenever they want?

21 A. Of all of their positions on the venue or what?

22 Q. Settle the PNL within the given perpetual contract that is
23 at issue?

24 A. I would need to answer that question, the context of what
25 I've already said. Settlement has many different meanings in

O4AAAEIS2

Dr. Mordecai - Cross

1 the context of reconciliation.

2 Q. What I'm talking about, the meaning as it's used in the

3 Mango Markets documentation that we're looking at right here.

4 Can they settle their PNL and move the profit and loss from the

5 perp market into the USDC token balance when ever they want?

6 A. You keep saying you and when ever you want. As I read this

7 based on my experience.

8 Q. I said the user account user.

9 A. I cannot tell that from this slide.

10 Q. You couldn't know from your knowledge of Mango Markets,

11 right?

12 A. I can say fairly confidently that whatever the user may

13 ultimately be able to do, this particular statement to me

14 appears to be more about the mechanics of how the internal PNL

15 account structure works and what, relative to what the user

16 may -- on the user interface which is mentioned in the third

17 line.

18 Q. But my question to you is, you agree that this talks about

19 the fact that there is some sort of settlement that allows for

20 the moving of profit and loss from the perpetual market into

21 the USDC token balance?

22 A. Well, what you said notionally makes some sense in the

23 following way. This talks about the mechanics of settling PNL

24 with regard to profit and loss occurrences in an account. That

25 internally among the internal accounts profits and loss from

O4AAAEIS2

Dr. Mordecai - Cross

1 accounts can move into a U.S. dollar coin token balance.

2 Then the next line says that internal reconciliation
3 transfer and settlement internally between the U.S. dollar
4 token balance, if you will, subaccount or call it whatever we
5 will ledger internal ledger and the PNL position instrument
6 internal ledger. Next line does not have an impact on our
7 overall open position and overall health and defined Mango
8 Markets. This is not -- your question to me seems to be about
9 whether or not the user has the right to cash and carry. I
10 have to tell you whether or not --

11 Q. That's not the question I asked you. Let me ask it again.
12 If you don't understand, tell me and I will try to clarify.

13 A. Okay.

14 Q. I said does the user of Mango Markets, the person who has
15 this perpetual position, is that person able to settle that,
16 their PNL balance and move the profit or loss from the
17 perpetual market into theirs USDC token balance?

18 A. I cannot answer that question appropriately as I sit here
19 based on how it's framed.

20 Q. That's fine.

21 A. Based on how it's framed, there are too many.

22 Q. I understand. So my question to you then is, can
23 settlement in the meaning that it's given in the Mango
24 Markets's documentation, can settlement occur when ever the
25 user wants or is there some other schedule? And if you don't

O4AAAEIS2

Dr. Mordecai - Cross

1 know, just tell me you don't know.

2 A. That would require more analysis since it was outside my
3 original scope.

4 Q. It is outside your scope. So, you don't know?

5 A. I'm saying -- could you repeat the question and I'll try to
6 see if I could do any better.

7 Q. Dr. Mordecai, please, try to listen to my questions, okay?

8 THE COURT: Hold on, counsel. I'll give the
9 instructions. If you have an application to make, you can make
10 it to the Court. Otherwise, please proceed.

11 MS. HUANG: Can we have side bar please?

12 THE COURT: Yes, you may.

13 (Continued on next page)
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O4AAAEIS2

Dr. Mordecai - Cross

1 (side bar)

2 MR. GREENSPAN: Your Honor, this witness on direct
3 testified as an expert on Mango and Mango Markets. He seems
4 not to actually have expertise in that he doesn't seem to have
5 reviewed the materials that are foundational to that and I move
6 to strike as an expert.

7 THE COURT: Okay. Well, that motion is denied.
8 However, you can make a motion.

9 I think the problem here is that you are not getting
10 responsive answers to your questions. And the appropriate
11 course is to make objections and you can move to strike answers
12 that he has given. And if you want to rephrase your motion to
13 strike him as an expert after your cross-examination or at a
14 later juncture, I am happy to entertain it. But based on what
15 I've seen so far, the issue is really you are asking him
16 hypothetical questions and he is not answering in a responsive
17 way or a concise way. So you don't need to give him
18 instructions but if you seek guidance from the Court and --

19 MR. GREENSPAN: Of course.

20 THE COURT: Does the government have --

21 MR. BURNETT: I'm not going to try to defend the
22 conciseness of the witness's answers. I think part of the
23 issue is as the witness has said a number of times, a lot of
24 those questions are outside the scope of what he was asked to
25 as a part of the project he wasn't -- and he as from the Mango

O4AAAEIS2

Dr. Mordecai - Cross

1 Market he is tendered an expert in certain areas of economics
2 and all his testimony on direct was about the effect of certain
3 trading on the value of certain perpetual position.

4 I think Mr. Greenspan, I don't want to interrupt his
5 cross-examination. I think he keeps asking broad questions,
6 we're going to get nothing answers because he doesn't know.

7 THE COURT: Well, I don't know that that's a fair
8 characterization of the witness's testimony either. I think
9 that to this point intentional or unintentionally, the witness
10 is evading some of the questions either on subjects that he has
11 provided testimony on direct-examination and I think that the
12 jury can evaluate that and make their determination as to the
13 witness' credibility.

14 But the important point I think is that application
15 needs to be made to the Court to, if you want to get answers
16 and then again, if we do come to a point where you are asked
17 questions that are within the scope of the witness's expertise
18 and what has been proffered you, you are free to rephrase your
19 motion to strike him as an expert but I don't think we've
20 gotten there yet.

21 (Continued on next page)

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O4AAAEIS2

Dr. Mordecai - Cross

1 (In Open Court)

2 THE COURT: Mr. Greenspan, you may proceed.

3 MR. GREENSPAN: Thank you, your Honor.

4 Q. Coming back to the question, is there a timing mechanism,
5 if you know -- Sorry if you've answered this -- but is there a
6 timing mechanism, if you know, on when a user can settle? Can
7 they settle whenever they want or some schedule for it? I
8 don't remember if you said you don't know.

9 A. I can't say under what contingencies or conditions, certain
10 of these actions are alluded as I sit here today. These things
11 are typically fairly involved. And so based on circumstances,
12 I need to understand exactly what we are talking about. I
13 guess the answer is I cannot answer that today as I sit here,
14 that particular question.

15 Q. So if you don't know how settlement works, then fair to say
16 you don't know exactly how withdrawals happen on Mango Markets?

17 A. I don't believe that was what I said. I said to you that
18 you asked me about something specific with regard to a timing
19 mechanism on settlement. I said there may be conditions as to
20 how the timing mechanism applies to different facts and
21 circumstances.

22 Q. I would not then go to a general you don't know anything
23 about any of that stuff. I don't think it's appropriate. I
24 think it mischaracterizes my answer fair to say that one would
25 need to settle a profit or loss before one could withdraw a

O4AAAEIS2

Dr. Mordecai - Cross

1 profit for something like the Mango Markets.

2 A. I do not agree.

3 Q. So how does one withdraw a profit with settling the
4 position?

5 A. I didn't say it was an actual ultimate. It was I said very
6 individual payoff profit. You've got to, recorded incurred
7 profit to an account based on the movement. This happens in
8 repo markets all the time. I've worked in repo markets for
9 years.

10 THE COURT: Strike, the witness's last answer will be
11 stricken and the jury is to disregard it.

12 Mr. Greenspan.

13 MR. GREENSPAN: Thank you, your Honor.

14 Q. My question is about the Mango Markets and your testimony
15 about the withdrawals. You remember you testified about that
16 on direct?

17 A. Yes.

18 Q. Do you remember that?

19 A. I do.

20 Q. If you are testifying about concept of withdrawals, how
21 would one withdraw from their PNL without borrowing just a
22 withdrawal without settling a position?

23 A. Since I interpret the withdrawals based on my analysis as
24 effectively a borrow, this is a difficult question to answer as
25 you've posed it.

O4AAAEIS2

Dr. Mordecai - Cross

1 Q. Your testimony is that the only way that someone can
2 withdraw from a Mango Markets out of their profit and loss is
3 to borrow?

4 A. What I said was, based on the analysis of facts and
5 circumstances observed and based on the token withdrawals
6 that -- I see your head shaking, so I'm going to stop.

7 Q. Let me ask the question again. Is there a mechanism by
8 which someone whose Mango Markets position with a profit and
9 sufficient collateral such that the account is healthy, do you
10 know what that term means?

11 A. I'm familiar with the --

12 Q. The account is healthy. This individual has a Mango
13 Markets position. I'm not talking about any specific one you
14 looked at yesterday and it has a positive PNL and it's a
15 healthy account. Is there a way for that user to withdraw from
16 Mango Markets without borrowing the funds?

17 A. Given the way you've set up your question as a hypothetical
18 effectively without any of the specific details from the case
19 in isolation with a positive PNL, funds may be withdrawn.

20 Q. Without borrowing, right? That was the question.

21 A. If in fact none of the other facts from this case are
22 applicable to your question, then in that isolated incident I
23 would say one can certainly withdraw without borrowing
24 depending on what other transactions you may or may not have
25 done on the venue that may be outstanding at the time.

O4AAAEIS2

Dr. Mordecai - Cross

1 Q. Just getting back to a very simple question, it is possible
2 to withdraw from Mango Markets in a way other than just
3 borrowing, right?

4 A. In the absence of other factors that may influence whether
5 the answer is yes or no, yes, if you lay out of those other
6 things and you got a long position and as all you've got you
7 can withdraw when effectively ending up in a borrowing position
8 or having some remaining obligation.

9 Q. Let's take a situation, the users put in a hundred dollars,
10 okay, to open the perpetual position, okay? Okay?

11 A. I'm just thinking about your questions. I understand so
12 far.

13 Q. Okay. And the position is healthy. Can you explain to the
14 jury what "healthy" means?

15 A. Healthy means that the position is not in a negative or
16 close to maybe going negative level of solvency, that the
17 particular account is not facing some kind of an adverse state.

18 Q. Would it be fair to say that it has sufficient collateral;
19 is that another way of putting what you just said?

20 A. It has adequate collateral to continue to function as an
21 account.

22 Q. Right. So this account is healthy, has adequate
23 collateral. The initial stake was a hundred USDC, okay? Good
24 so far?

25 A. Yes.

O4AAAEIS2

Dr. Mordecai - Cross

1 Q. And the user wants to withdraw a hundred USDC's, not a
2 borrow, right?

3 A. Absent any other facts with the withdrawal of hundred USDC
4 that was deposited it certainly can withdraw that. It's not
5 incompetent.

6 Q. Now let's go back to the scenario where there's a profit in
7 the account. Let's take the short account and it's a 320
8 profit on a hundred dollars initial stake okay?

9 A. Okay.

10 Q. That person, that user can withdraw more than \$100 without
11 borrowing, right?

12 A. Provided there are no other encumbrances then and it's free
13 and clear, then they certainly could monetize their profit
14 provided there are no other encumbrances, it's free and clear.

15 Q. Turning back to the concept of liquidation, liquidation
16 doesn't appear on any of your slides, right?

17 A. It does not.

18 Q. And liquidations is an important part of how Mango Markets
19 work, right?

20 A. Liquidation is an important part of how any trading venue
21 would function.

22 Q. You chose to omit that from your slides, fair?

23 A. I wasn't asked questions specific to liquidation events.

24 Q. So the government didn't ask you to include liquidation?

25 A. It wasn't part of my original scope of assignment.

O4AAAEIS2

Dr. Mordecai - Cross

1 Q. But it was to look at those two accounts that you talked
2 about, the long position and short position that you analyzed,
3 right?

4 A. I was, my original assignment was to look at the offsetting
5 profits being long/short position the existing obligation and
6 the withdrawal events.

7 Q. You are aware, are you not, that that long position that
8 you looked at suffered 209 partial liquidations?

9 A. That is actually not something I particularly focused on.

10 Q. Do you know if it suffered any liquidations?

11 A. As I state here, I can't recall what I know about
12 liquidation events.

13 Q. You don't know if it was liquidated at all?

14 A. That was not part of my scope of assignment.

15 Q. That's a short position that short position was open to
16 liquidation almost immediately right after the trading started?

17 A. Could you maybe rephrase what you mean by "open to
18 liquidation".

19 Q. Let's take a look at one of your charts. You don't deny
20 that there are liquidations on the long side? You don't know
21 whether --

22 A. I did not focus as part of my assignment on the liquidation
23 events.

24 Q. Another way is answering no.

25 A. As I sit here, no, I can't really answer that no.

O4AAAEIS2

Dr. Mordecai - Cross

1 MR. GREENSPAN: Can we pull up Government Exhibit 1341
2 Mr. Smith please.

3 (Pause)

4 MR. GREENSPAN: I apologize. I think we have a
5 slightly different version. Can we take this down. Can the
6 government put up Government Exhibit 1341 please, if you would.

7 (Pause)

8 Q. This is Government Exhibit 1341 and you were asked about
9 this on direct; do you remember that?

10 A. I do.

11 Q. The blue is the long position and the orange is the short
12 position, right?

13 A. Correct.

14 Q. So if we look at 6:30 p.m. on the short position the orange
15 it's got a PNL of more than negative 4100 million, right?

16 A. Correct.

17 Q. Fair to say, that's open to liquidation at that point?

18 A. Again, I don't remember the specific rules about when a
19 liquidation occurs.

20 Q. You don't know if an account that has a negative \$100
21 million balance can be negative, \$100 million loss can be
22 liquidated?

23 A. What I do not know is the mechanism, the timing of
24 mechanism for liquidation and whether the timing for the
25 mechanism, as well as I don't know the specific rules whether

O4AAAEIS2

Dr. Mordecai - Cross

1 that liquidation given the short period of time that transpired
2 during which it was a negative whether it was enough time for
3 liquidation.

4 Q. You just don't know if at any of the points from 6:25 to 7
5 o'clock this short position, you don't know if it could have
6 been liquidated --

7 A. I would need to have a thorough visibility into and do
8 analysis of how the architecture was operating or intended to
9 operate between 6:27.

10 Q. Sitting here today though, do you know whether that account
11 could be liquidated between 6:25 and 7 o'clock? Do you know
12 that sitting here today?

13 A. I'm not going to be able to answer that question as I sit
14 here, no, for reasons I started stating.

15 Q. Okay. So you don't know whether in fact that short
16 position was liquidated, do you?

17 A. As I told you, liquidation events mechanics were not within
18 the scope of the assignment I was engaged for by the
19 government.

20 Q. Fair to say that if this account was liquidated, it would
21 change the way your picture looked?

22 A. I would have to say that the realized losses, realized PNLs
23 would probably have a different, would create a different path
24 here. This, as I said, these are I call these kind of paper,
25 paper PNL, the actual realized what you might call real money

O4AAAEIS2

Dr. Mordecai - Cross

1 PNL, what the liquidations would likely be different from this.

2 Q. Fair to say that your graph would be different if this
3 account was liquidated and you were asked to consider that; is
4 that fair to say?

5 A. I'd have to say all equal under your hypothetical, outside
6 from the facts that I've studied, if there may be other things
7 that affect that but it's not unreasonable to think that a
8 graph like this would change if you added in additional
9 information for things like liquidation because then account
10 balances would all change. A lot of things would change but I
11 don't have enough information to tell you how.

12 Q. I understand that you don't know exactly how it would
13 change but I'm not sure I understand what's not unreasonable to
14 say is. My question is would the graph look different? Do you
15 understand that question?

16 A. I do. And my answer is it would look different. We just
17 don't know how it would look different because all of the other
18 facts are pertinent right because set of liquidations might
19 affect many things on the graph, not just the orange line.

20 Q. Right. But you didn't look at that. But this is what you
21 are and it would look different if there were liquidations.

22 A. It would look different. It's an empirical question as to
23 whether that difference makes this worse or better.

24 Q. What do you mean by "worse or better"?

25 A. It depends on facts and circumstances. That's all I'm

O4AAAEIS2

Dr. Mordecai - Cross

1 saying. It's an empirical question subject to study.

2 Q. It's an empirical question?

3 A. Subject to study. Subject to analysis, subject to study
4 suggest additional data that would be consistent with the kinds
5 of questions you are asking.

6 Q. It's an empirical question subject to study an analysis
7 whether if there were liquidations you accurately reflected
8 them on your graph?

9 A. That's, you asked me a question as to whether the graph
10 would look different, right?

11 Q. Then you said it would be better or worse and I asked --

12 A. I said no. I said whether it is better or worse, different
13 how it's different, what else changes is going to be subject to
14 additional information, right, and I can't tell you
15 specifically how it would be different. It's reasonable to
16 think it would differ.

17 Q. If liquidation occurred, then it isn't fully accurate, is
18 it?

19 A. This graph is accurate for the things it's meant to
20 demonstrate. If you are bringing other facts and circumstances
21 in, I would --

22 MR. GREENSPAN: Move to strike.

23 THE COURT: Was there an application?

24 MR. GREENSPAN: Move to strike.

25 THE COURT: The motion is granted. The witness's last

O4AAAEIS2

Dr. Mordecai - Cross

1 answer will be stricken. The jury is to disregard it.

2 Q. Let me ask the question again, Dr. Mordecai.

3 If liquidation in fact occurred, then that graph isn't
4 fully accurate, is it?

5 A. Currently, yes. If liquidations occurred, there would be a
6 graph that could be, a graph could be built that would show
7 liquidation impacts on the PNL.

8 MR. GREENSPAN: You can take this down, Mr. Smith.

9 (Pause)

10 Q. So I'm going to call the price at which one could purchase
11 contracts of perpetuals on Mango Markets, the market rate, will
12 you accept that term, the market price?

13 A. I would refer to it differently since the venue is one of
14 many venues. So I would refer to it as the venue's price,
15 available price.

16 Q. You won't understand fee. If I use the term market price
17 you won't understand what that is?

18 A. It has a different meaning to me.

19 Q. So we'll go with venue price; is that the one you want?

20 A. I'll go with prevailing venue price.

21 Q. Okay. The prevailing venue price is the price at which a
22 user could buy a Mango Markets contract, right?

23 A. The prevailing menu price for purpose of this discussion;
24 that is correct.

25 Q. Okay. And you don't have a prevailing venue price anywhere

O4AAAEIS2

Dr. Mordecai - Cross

1 in your slides, do you?

2 A. It is -- I don't refer to it as a prevailing venue price.

3 Q. Now do you prefer to it in of your slides?

4 A. Slides at which the price, the contracts was executed could
5 be the prevailing menu price because, obviously, the contract
6 executed at that price.

7 Q. And which of your exhibits has the contract, the price at
8 which the contract was executed?

9 A. Well, the exhibits that showed the buys and sell order that
10 a column related to price of the contract at inception at its
11 inception and that is the price I referred to.

12 Q. Okay. Do you have any exhibits showing how that the
13 prevailing venue price, how that moved over time?

14 A. I have -- it's implicit in the trajectory of the PNL but I
15 don't have it explicitly as stated.

16 Q. Listed in projection of PNL?

17 A. The path of PNLs because I don't believe profits and losses
18 occur based on the change in price between MNGO and USDC.

19 Q. What is the PNL based on how is that calculated?

20 A. It would be the difference in the -- well, generally
21 speaking, it is the difference in the Oracle price delivered at
22 a particular point in time on ratio between the MNGO token, the
23 Oracle price to that relevant to --

24 Q. Base, it's as based on?

25 A. Based on price calculation and coming over Oracle.

O4AAAEIS2

Dr. Mordecai - Cross

1 Q. The Oracle price is not the same price as these are two
2 different prices, right?

3 A. Not necessarily.

4 Q. Not necessarily. They can be different but not always?

5 A. My understanding of MNGO or the Mango trading venue is that
6 it takes in a price feed from the Oracle and that becomes
7 prevailing price at which trades can be executed and also the
8 prevailing price at which accounts PNLs are calculated.

9 Q. So the prevailing venue price and the Oracle price are the
10 same?

11 A. Whether there's an additional normalization or any other
12 kind of adjustments paid, I don't recall as I sit here today.
13 So I would say, it's approximately correct.

14 Q. Okay. Approximately, correct. And are you familiar with
15 something called the "funding rate"?

16 A. I am familiar with funding rate.

17 Q. What is the funding rate.

18 A. The funding rate, generally speaking, although, I did not
19 specifically focus on that for my scope of assignment, is rates
20 set by the venue to try to provide incentives to maintain the
21 overall health of the platform in terms of supply and demand
22 for focus.

23 Q. Isn't -- funding rate to close gaps between that prevailing
24 funding price and Oracle price; isn't that what it's for?

25 A. Within the context of trying to maintain the balance of

O4AAAEIS2

Dr. Mordecai - Cross

1 deposits representative to withdrawals or borrows. It's meant
2 to effectively provide a clearing mechanism to preserve the
3 solvency of trading venue given the arrival of different
4 withdrawals, deposits and changing rules.

5 Q. Let me try to be clear about this. Isn't the reason that a
6 perpetual market has a funding rate -- isn't the reason for
7 that to close the gap that exists between or that can exist
8 between the prevailing venue price and the settlement price;
9 isn't that what it's for?

10 A. That is one purpose.

11 Q. So if it's purpose, then they're not the same price, right?

12 A. That is one purpose.

13 Q. So if it's one purpose, then they are not the same price
14 and the answer you gave me a moment is inaccurate, right?

15 A. The answer I gave a moment ago is an answer to the question
16 you asked a moment ago. And as I suggested, there are a lot of
17 factors involved and those factors involve many different
18 functions that take place on the platform, not just that one
19 contract. There is the borrow. All these other supply and
20 demand forces that have to be --

21 MR. GREENSPAN: Your Honor, I move to strike.

22 THE COURT: Granted. The witness's last answer will
23 be stricken. The jury is to disregard it.

24 Q. If the funding rate exists at least in part to close the
25 gap between the prevailing venue price and the Oracle price,

O4AAAEIS2

Dr. Mordecai - Cross

1 doesn't that mean they have to be different at times?

2 A. At times they do have to be different and I believe I said
3 that previously and that's why I said "approximate".

4 Q. When you said "approximate" it you means sometimes the same
5 and difference, it's different?

6 A. Correct.

7 MR. GREENSPAN: Mr. Smith, could put up Government
8 Exhibit 13308. This is in evidence.

9 (Pause)

10 MR. GREENSPAN: If you could highlight and pull out
11 please the notes and sources at the bottom.

12 Note says: The Mango Markets USDC Oracle price
13 indicates the number of USDC required to purchase one unit
14 Mango as posted to switchboard.

15 Q. Do you see that?

16 A. I do.

17 Q. Isn't it the case that the switchboard Oracle reported
18 prices in USD and not in USDC?

19 A. I don't recall.

20 Q. I believe on direct you talked about being shown a
21 transcript of testimony shown earlier in trial from switchboard
22 CEO Mr. Hermida; do you recall that?

23 A. I recall looking at something. I don't remember what
24 particular part of the testimony.

25 Q. You haven't seen a portion of his transcript where he

O4AAAEIS2

Dr. Mordecai - Cross

1 testified the Oracle price was reported and in U.S. dollars,
2 USDC?

3 A. I don't recall. I think I was shown a specific excerpt,
4 no.

5 Q. Is it your belief that the switchboard price is reported in
6 USDC?

7 A. I don't recall as I sit here, no.

8 Q. Did you write this?

9 A. I reviewed and edited it and made comments on it.

10 MR. GREENSPAN: Let's pull up Government Exhibit 1309
11 please Mr. Smith.

12 (Pause)

13 MR. GREENSPAN: And if we could pull out the notes
14 again.

15 Q. This note three is the same notoriety?

16 A. It is.

17 Q. Do you know who wrote this before you reviewed it?

18 A. A member of my team.

19 Q. Then you reviewed and OK'd it, right?

20 A. I reviewed, may have asked some questions about it and I
21 concluded that it was reasonably accurate for the purposes.

22 Q. What does "reasonably accurate" mean?

23 A. Well, first of all, switchboard is the functionalities for
24 the Oracle pricing and the contract relationship between USDC
25 and MNGO are a one-to-one relationship with regard to token to

O4AAAEIS2

Dr. Mordecai - Cross

1 token. .

2 Q. But USDC and U.S. D aren't the same thing, right?

3 A. There is a USDC token that is pegged to the U.S. dollar, as
4 there's USDT token that's pegged to the U.S. Treasury.

5 Q. So for your purposes, if USDC and USDT are pegged to
6 dollar, they're based, you can interchangeably about the
7 dollar, right?

8 A. USDT is pegged Treasury, U.S. Treasury. USDC is pegged to
9 dollar currency. They have a close, a economy -- relationship.

10 Q. For your purposes, fair to say that USDC, USDT and U.S.
11 dollar are close enough in value that they're interchangeable
12 to you?

13 A. I think interchangeable is overstating. I would say that
14 they have close a relationship as I said before. And the focus
15 here was on the MNGO to USDC relationship.

16 Q. If I represent to you the Oracle price is in U.S. dollars
17 and USDC, does that make your footnote inaccurate?

18 A. It makes it approximate. There's proportional relationship
19 that's quite close.

20 Q. Good enough?

21 A. That's close.

22 MR. GREENSPAN: Okay. Let's take this down please.

23 Could we put up Government Exhibit 1314, please.

24 (Pause)

25 MR. GREENSPAN: Pull out the footnotes again.

O4AAAEIS2

Dr. Mordecai - Cross

1 (Pause)

2 Q. Again, here Footnote Two refers to the price Mango over
3 USDC; do you see that?

4 A. Footnote number two, correct.

5 Q. And if you go forward it is priced as posted FTX; do you
6 see that?

7 A. I do.

8 Q. FTX also reports that the prices in U.S. dollars, does it
9 not.

10 A. I cannot recall as I sit here now.

11 Q. But if it's the case, if that does report prices it's
12 dollars, same analysis as before, it would be close?

13 A. The tracking error between USDT, USDC and dollars was
14 something I examined and analyzed and they're very close
15 together.

16 Q. Okay. So you looked, when you say tracking error, you
17 looked at the, how close they were in value at this time?

18 A. Over a time series.

19 Q. And what was that time series?

20 A. I don't recall. I do remember doing that earlier just to
21 understand the nature of dynamics.

22 Q. Was that time series, did that encompass the time in
23 question for your slides?

24 A. Some of it might have been a general literature view of
25 research has been done in the area. Some of it may have been

O4AAAEIS2

Dr. Mordecai - Cross

1 from calculation I asked my team to do. I don't remember which
2 I am thinking of now and I also don't recall over what specific
3 time period.

4 Q. Understood. Can you proximate it though? What that time
5 series was?

6 A. I wouldn't want to just read something in the record I
7 wasn't sure about.

8 Q. You can't approximate?

9 A. I probably wouldn't try to do that.

10 Q. Let's take a look at the source. Number one says FTX
11 historical Mango data from it has a planning series here color,
12 size and price; do you see that?

13 A. I do.

14 MR. GREENSPAN: Let's take this down and put up
15 Government Exhibit 200.

16 (Pause)

17 MR. GREENSPAN: One moment, your Honor?

18 (Pause)

19 THE COURT: Mr. Greenspan, how much time do you have
20 left?

21 MR. GREENSPAN: About 15/20 minutes.

22 THE COURT: Okay. You may proceed.

23 MR. GREENSPAN: Okay.

24 Q. Is this the document that you relied on, the source in that
25 previous document?

O4AAAEIS2

Dr. Mordecai - Cross

1 A. Could you show me the timestamp -- the stamp on the other
2 one.

3 Q. You want to see the previous one?

4 A. Yes.

5 MR. GREENSPAN: Sure.

6 THE WITNESS: Could you put them side-by-side if you
7 want.

8 (Pause)

9 MR. GREENSPAN: Let's put up Government Exhibit 1314
10 please.

11 (Pause)

12 MR. GREENSPAN: Could we now put back Government
13 Exhibit 120 please.

14 Q. Is that the source document?

15 A. It appears to be.

16 Q. If we look over at Column D, do you see the market ticker?

17 A. I do.

18 Q. Do you see Column F, the quote currency ticker?

19 A. I do.

20 Q. Those are in U.S. dollars, right?

21 A. It appears so.

22 MR. GREENSPAN: Let's take that down please.

23 (Pause)

24 MR. GREENSPAN: Let's put up please, Mr. Smith,
25 Government Exhibit 1306.

O4AAAEIS2

Dr. Mordecai - Cross

1 (Pause)

2 Q. Do you remember testifying about this on
3 direct-examination?

4 A. I do.

5 Q. You testified about the volume going up in that gray period
6 around 6:25 p.m.; do you remember that?

7 A. I do.

8 Q. The volume never goes down, right, on this chart after it
9 goes up to its peak?

10 A. Not on this chart. Although, it did on others.

11 Q. On other charts that you've produced in this case?

12 A. Yes.

13 Q. And which exhibit is that?

14 A. I believe you had one of them up earlier. You had several
15 of them up earlier.

16 Q. Something I showed you earlier today.

17 A. I thought I just saw it a few minutes ago, unless my memory
18 is failing.

19 Q. Do you recall what that exhibit looked like? I'd love to
20 put it up?

21 A. If you'd like to click backwards you'll probably run into
22 it.

23 MR. GREENSPAN: Permission to approach, your Honor?

24 THE COURT: You may.

25 (Pause)

O4AAAEIS2

Dr. Mordecai - Cross

1 Q. Dr. Mordecai, what I've just handed you is a pact of your
2 exhibits. You could page through those and tell me which one
3 you'd like me to put up.

4 (Pause)

5 A. I'm looking specifically for --

6 THE WITNESS: I'm trying to explain, your Honor, I'm
7 not trying to be non-parsimonious.

8 THE COURT: Well, hold on. The only question is what
9 documents you need to have up.

10 (Pause)

11 A. Well, I'm going to give one example.

12 Q. What would you like me to put up?

13 A. There are others but if you look at 1329.

14 MR. GREENSPAN: Can we put up 1329 please, Mr. Smith.

15 (Pause)

16 A. So this overlays --

17 THE COURT: Well, hold on.

18 Mr. Greenspan, do you have a question?

19 Q. Dr. Mordecai, this is a chart showing the volume at Serum
20 DEX, right?

21 A. It is.

22 Q. And the volume at Serum DEX is the volume of trading in the
23 Mango token in the spa market, right?

24 A. That is correct.

25 Q. So this isn't the volume of trading of Mango Markets --

O4AAAEIS2

Dr. Mordecai - Cross

1 A. That is also correct.

2 Q. And the chart I previously showed you was a chart of
3 trading of Mango Markets contracts on Mango Markets, right?

4 A. Correct.

5 Q. So this isn't the same?

6 A. It is not the same thing.

7 Q. Do you still think that there's a chart that shows selling
8 sometime later of the Mango Markets on Mango Markets?

9 A. I may be recalling some analysis I did that did not end up
10 as an exhibit. So it's hard for me to recall right now. I
11 don't see it in the deck I've been given.

12 Q. The analysis that you are referring to, is that something
13 you would have given to the government.

14 A. It may have just been some of my own -- not my own. The
15 teams work that I maybe asked them.

16 Q. Let's just establish, it sounds to me like you are
17 speculating. Are you show that you did this analysis?

18 A. I'm not sure. So I'm going to save as I sit here I can't
19 be sure.

20 MR. GREENSPAN: Let's take down 1329 please.

21 (Pause)

22 MR. GREENSPAN: Let's put up Government Exhibit 1341,
23 please, Mr. Smith.

24 (Pause)

25 MR. GREENSPAN: Let's take a look at -- would you

O4AAAEIS2

Dr. Mordecai - Cross

1 mind, Mr. Oshinsky highlighting the notes and pulling that out.
2 Thanks for your help.

3 (Pause)

4 Q. So looking at the source document here, number two, it
5 talks about the two accounts. Let's take a look at number one.

6 Source number one says MNGO-PERP Oracle price dating
7 from DOJ 63 column base Oracle price, right?

8 A. It does.

9 MR. GREENSPAN: Mr. Oshinsky, could you put up
10 Government Exhibit 992.

11 (Pause)

12 Q. Is it the source data for the Government Exhibit 1341 we
13 just looked at if you know?

14 A. Could you flip back so I can compare the numbers please.

15 MR. GREENSPAN: Mr. Oshinsky, is it possible to flip
16 back?

17 (Pause)

18 A. I think I've internationalized it enough to be able to talk
19 about it because we're focusing on Source Number Two.

20 Q. Source Number One.

21 A. Okay. So this is the price data source. Okay. Got it.

22 Q. Is that what we looked at, Mango Markets Oracle price data,
23 just a moment ago when we had Exhibit 992 up on the screen?

24 A. If I could ask you to go back to that one.

25 Q. Sure. That's fair.

O4AAAEIS2

Dr. Mordecai - Cross

1 (Pause)

2 THE WITNESS: Could I ask you to either expand the
3 column so I can read the titles or click on the titles so I can
4 at least read them.

5 (Pause)

6 A. Based on my general recollection, this does appear to be
7 the same or similar source.

8 MR. GREENSPAN: Okay. Can we put Exhibit 1341 back
9 up.

10 (Pause)

11 Q. So the calculations in the document were really just based
12 on the price of Oracle at any given time and value of the
13 initial position on the long and short side, right?

14 A. That's reasonable.

15 Q. And as we discussed earlier, it didn't take into account
16 things like liquidation, right?

17 A. The PNL did not reflect liquidation in this exhibit. It
18 does show liquidation events, shows withdrawal events,
19 doesn't --

20 Q. It shows did those withdrawal events have any effect on the
21 way the long and short PNL was calculated?

22 A. These were meant to simply show timing calculation. It was
23 not showing a capital response. This is not based on what's
24 left in the account. So the answer is conditionally it doesn't
25 show that but it was never intended to show that.

O4AAAEIS2

Dr. Mordecai - Cross

1 Q. It doesn't show and it was never intended?

2 A. It was certainly intended to overlay timing of events,
3 timing of withdrawals.

4 Q. There is no question pending.

5 A. I'm sorry.

6 MR. GREENSPAN: I move to strike that.

7 THE COURT: Do you have a motion?

8 MR. GREENSPAN: Yes. I am sorry.

9 THE COURT: Okay. The motion is granted in part as to
10 the witness's answer after what's left in the account, period.

11 MR. GREENSPAN: Thank you, your Honor.

12 (Continued on next page)

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O4CCeis3

Mordecai - Cross

1 MR. GREENSPAN: Is the government able to display
2 Government Exhibit 50?

3 THE COURT: Because I'm reading the real time, it
4 looks like that's not the right cutoff, it would be after the
5 following sentence. So after it was never intended to show
6 that, period.

7 MR. GREENSPAN: Can we put up -- thank you, Mr. Smith.
8 Q. If you can take a moment to take a look at this,
9 Dr. Mordecai. After you've had a moment, let us know and we'll
10 show you the second page.

11 (Pause)

12 Can we flip to the second page?

13 A. Yes, go ahead.

14 (Pause)

15 Q. Have you had enough time to review the document, sir?

16 A. I'm surveying the document as a snippet of commands.

17 Q. This is computer code; right?

18 A. This is a snippet of command line returns, log data. I
19 don't have enough here to contextualize it, but it is
20 basically -- comes across more like log responses and metadata
21 than actual code commands.

22 Q. From what you see here, these log responses you call them,
23 you see that on line 4, there's something on program logged,
24 Mango, colon, settle, P&L. Do you see that?

25 A. I see that.

04CCeis3

Mordecai - Cross

1 Q. Fair to say that the program was run to settle the P&L of
2 this particular account?

3 A. It shows a log entry or log response or return, indicating
4 some form of a settlement of P&L took place. But, again -- I'm
5 going to stop there.

6 Q. But you don't know which account this relates to; right?

7 A. Not as I sit here for the answer to this particular answer,
8 I did not review this in any detail. And I also don't know
9 what the term "settle P&L" as a log return actually means in
10 context.

11 Q. That's beyond the scope of your expertise; fair to say?

12 A. It's beyond the scope of the review that I've done because
13 I didn't review this code base.

14 Q. If you had more time with this now, would you be able to
15 interpret that or is that something that would just be beyond
16 your scope right now?

17 A. It's beyond the scope from my assignment. I'd need to
18 understand the definitions within the code base and then
19 understand the metadata and what the logs will return. There's
20 a lot more to it than just glancing through.

21 MR. GREENSPAN: Okay. Take that down. Thank you.

22 Q. Let's take a look at Government Exhibit 1342. Do you
23 remember testifying about this document on direct, sir?

24 A. I do.

25 Q. In the final column, it says, "value borrowed." Do you see

O4CCeis3

Mordecai - Cross

1 that?

2 A. I do.

3 Q. It totals it up, and at the very bottom, it says "total
4 withdrawals," right?

5 A. It does.

6 Q. Earlier we established that withdrawals aren't necessarily
7 the same as borrows; right?

8 A. We had -- could you rephrase the question, because I want
9 to answer it accurately.

10 Q. You remember earlier we talked about somebody withdrawing
11 their own funds if their account was healthy, and you said that
12 wouldn't be a borrow?

13 A. I believe that mischaracterizes what I said.

14 Q. If someone withdrew their own funds and their account was
15 healthy, would that be a borrow?

16 A. My answer, as I recall it before --

17 Q. I'm asking the question fresh. You don't have to worry
18 about the answer from before.

19 If someone had a healthy account and their P&L
20 exceeded their initial deposit, it was healthy and they took
21 some or all of their initial deposit, would that be a borrow?

22 A. Conditionally, if "healthy" meant an otherwise unencumbered
23 with regard to the venue, then yes a simple withdrawal is a
24 simple withdrawal. The answer then is conditionally yes,
25 subject to other factors.

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Mordecai - Cross

1 Q. But here, you concluded that borrow and withdrawal were the
2 same; right?

3 A. Given -- yes, I did, for reasons I can easily state.

4 MR. GREENSPAN: Let's take a look at, if you could,
5 Mr. Smith, expand out the source at the bottom.

6 Q. Do you see the source here, Dr. Mordecai?

7 A. I do.

8 MR. GREENSPAN: Let's display, if you will, please,
9 Mr. Smith, Government Exhibit 932.

10 Sorry. Switched back to Mr. Oshinsky. Thank you.

11 Q. Do you see this document, Dr. Mordecai?

12 A. I do.

13 Q. This is one of the two source documents for Government
14 Exhibit 1342; right?

15 A. In order to not waste time, I will accept that for --

16 Q. This document doesn't say anything about borrows, does it?

17 A. There is nothing on the current page that says anything
18 about borrows.

19 Q. At the top, there is this account name that ends in RNJNA;
20 right? You see that?

21 A. You know what, I have to restate my answer.

22 On the lower -- on the upper left side in the column,
23 there is an icon for a borrow page. How it's related to this
24 page would require --

25 Q. That icon appears not to be selected, right, the icon next

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Mordecai - Cross

1 to account is highlighted and appears to be selected; right?

2 A. This is only displaying account information for this
3 account.

4 Q. And then we have this account name and some account
5 identifying information here in the top left-hand corner and
6 below that, sort of two rows, we've got a series of oval
7 buttons, and the third one over says "withdrawals," and that's
8 highlighted; right?

9 A. Correct.

10 Q. And then below that, it says "nine withdrawals," right?

11 A. There are nine rows.

12 Q. Fair to say these are withdrawals, sir?

13 A. Correct, it says "withdrawals."

14 Q. And it doesn't say anything about borrows; right?

15 A. Not on this page.

16 Q. This is the long account; right?

17 A. Based on my recollection, I believe this to be the long
18 account, yes. Actually, yes, it is the long account.

19 MR. GREENSPAN: If we could put up Government Exhibit
20 923, please.

21 Q. If you could study it, this is the short account; right?

22 A. Correct.

23 Q. And the same thing here, "withdrawals" is highlighted, it
24 says "10 withdrawals," and there are indeed 10 rows; right?

25 A. Correct.

04CCeis3

Mordecai - Redirect

1 Q. And it doesn't say anything about borrows; right?

2 A. Not on this page.

3 MR. GREENSPAN: So let's go back to 1342. If we look
4 back at the source, please.

5 Q. You sourced two documents, those are the two documents we
6 just looked at; right?

7 A. Correct.

8 Q. And there were columns in those documents, date, asset,
9 quantity, and value; right?

10 A. Correct.

11 Q. So there were no columns about "borrow" and there was no
12 information on those pages about "borrow" in your sources;
13 right?

14 A. Not explicitly stated on those particular pages.

15 MR. GREENSPAN: Nothing further. Thank you.

16 THE COURT: Thank you.

17 Ms. Huang.

18 MS. HUANG: Very, very briefly, your Honor.

19 Mr. Oshinsky, could you please pull back up Government
20 Exhibit 932.

21 REDIRECT EXAMINATION

22 BY MS. HUANG:

23 Q. Dr. Mordecai, you were just shown this by Mr. Greenspan;
24 correct?

25 A. Yes, correct.

04CCeis3

Mordecai - Redirect

1 Q. You were told to look at the withdrawals?

2 A. I was.

3 Q. And that there weren't any "borrows" shown on this page?

4 A. That is correct.

5 MS. HUANG: Mr. Oshinsky, could you please now show
6 Government Exhibit 914. Actually, hold on for one second here.

7 Q. This account is to the RNJNA account; is that correct?

8 A. Correct.

9 MS. HUANG: Can we go to Government Exhibit 914,
10 Mr. Oshinsky.

11 Q. Dr. Mordecai, this is also for the RNJNA account?

12 A. Correct.

13 Q. And it shows "borrows" here, if you see at the bottom?

14 A. It does.

15 Q. And, for example, for USDC, you see where it says "USDC"
16 there?

17 A. I do.

18 Q. And how many borrows are shown there?

19 A. 54,441,450.7.

20 MS. HUANG: No further questions, your Honor.

21 THE COURT: Thank you very much.

22 MR. GREENSPAN: If you can leave that document up.

23 THE COURT: Mr. Greenspan, do you have a further
24 examination?

25 MR. GREENSPAN: Yes, your Honor, just on this

04CCeis3

Mordecai - Recross

1 document. Or I suppose one other document. I'll be quick.

2 RECROSS EXAMINATION

3 BY MR. GREENSPAN:

4 Q. Remember you said that if someone had a healthy account,
5 they could take their own money out and it wouldn't be a
6 borrow?

7 A. You said that and I conditionally agreed under very, very
8 specific conditions.

9 Q. Well, wasn't it the case that this account was healthy at
10 the time and that 5 million USDC had been placed in the
11 account? Withdrawing that wouldn't be a borrow; right?

12 A. I'm sorry. Could you repeat that question.

13 Q. Sure. Do you remember that there was 5 million USDC used
14 to open this account? Do you remember that?

15 A. At its very inception?

16 Q. At its very inception, roughly, I don't know, 20 minutes
17 before this? I'm sorry. Let me withdraw that question.

18 Do you remember that there was \$5 million at inception
19 used to open this account?

20 A. I do.

21 Q. Do you remember that this account balance at the time of
22 this USDC, this top withdrawal was healthy? Do you remember
23 that?

24 A. I don't remember what the exact health rating was for the
25 account at the initial borrow instant, if that's what you're

O4CCeis3

Mordecai - Recross

1 asking me.

2 MR. GREENSPAN: Let's take a look at Government
3 Exhibit 1341.

4 Q. The initial borrow, as you call it, the initial withdrawal.
5 Sorry. Let me withdraw the question and start over.

6 The initial withdrawal is this black dotted line that
7 happens just before 6:30 p.m.; right?

8 A. That is correct.

9 Q. This is the long account and it has a profit of over
10 100 million USDC; is that right?

11 A. It shows a paper -- what I called a paper profit or a P&L
12 incurred of over 10 million based on --

13 Q. This account is clearly healthy; right?

14 A. I can't necessarily agree with that. The health rating
15 covers a lot of things.

16 Q. What information do you have that this account would have
17 been unhealthy?

18 A. I didn't make the statement that the account was unhealthy.
19 What I actually said was as to whether the account -- the
20 actual -- I cannot testify at this time as to the actual state
21 of the account with regard to the health rating as it is
22 specifically calculated.

23 Q. Why not?

24 A. Because I don't have the information in front of me to do
25 so.

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Mordecai - Recross

1 Q. What information would you need?

2 A. I would need to review other things that I don't have in my
3 hands right now.

4 Q. What things would you need to review, sir?

5 A. I'd need to look at the actual health rating calculation as
6 implied under the practices and policies of the Mango Markets
7 venue under these facts and circumstances.

8 Q. You understand how health ratings in Mango perpetuals work;
9 right?

10 A. I can recall a general understanding right now, I could
11 certainly say more specifically, but without having the
12 information in front of me, I'm not going to veer outside of my
13 lane, so to speak.

14 Q. If you had the underlying data, you could make a health
15 calculation about whether this account was healthy when it had
16 100-plus-million profit at approximately 6:29 p.m.; right?

17 A. I would need to do an analysis of the policies and
18 practices that applied to the health rating at the time that
19 this occurred in order to do so.

20 Q. Let's ask it as a hypothetical. Hypothetically, let's
21 assume that this account was healthy, understanding that you
22 haven't definitively testified about that, but let's assume it
23 for the moment. If this account was healthy, wouldn't that
24 long account be able to withdraw the 5 million USDC not as a
25 borrow?

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Mordecai - Recross

1 MS. HUANG: Objection, your Honor. Scope.

2 THE COURT: Overruled. But let's close this line of
3 inquiry quickly.

4 A. If you could repeat the question, please.

5 Q. Hypothetically, assuming that this account was healthy, and
6 as we see here, it has a profit of over 100 million USDC at
7 6:29 p.m. when it makes this initial withdrawal, wouldn't at
8 least 5 million USDC be not a borrow?

9 A. Not necessarily.

10 Q. Please expand.

11 MS. HUANG: Objection, your Honor.

12 THE COURT: Is that your last question?

13 MR. GREENSPAN: Sure.

14 THE COURT: Okay. You want to ask it again.

15 MR. GREENSPAN: Yes.

16 Q. So why is it that this account, hypothetically healthy at
17 6:29 p.m. with a P&L of over \$100 million and an initial
18 contribution of 5 million USDC, why is it that that 5 million
19 USDC could not be withdrawn as something other than a borrow?

20 MS. HUANG: Your Honor, that's a different question.
21 Objection.

22 THE COURT: Overruled.

23 A. At the account level, the mechanism may permit that
24 withdrawal. Given the facts, overall facts and circumstances
25 of this case and the relationship between this account and

O4CCeis3

Mordecai - Recross

1 other accounts --

2 MR. GREENSPAN: Move to strike, your Honor.

3 THE COURT: That's denied.

4 A. The relationship between the two accounts owned by one
5 entity, okay, undisclosed that that one entity owned both
6 accounts, given the fact that the document you put up and asked
7 me about talked about cross collateralization, cross default as
8 part of the mechanism applied in Mango Markets says that the
9 implicit health of the overall relationship of those two
10 accounts, given the offset, means that that positive P&L in the
11 long account is offset by the negative P&L in the short
12 account. And so, the overall position of that principal entity
13 that owns both accounts is actually not healthy. So, from an
14 account level, it looks healthy. From an actual solvency and
15 health of the overall platform because of that principle, I
16 would not consider that to be healthy. That was my answer.
17 You asked me for an answer, that was my answer.

18 MR. GREENSPAN: Your Honor, I renew my application to
19 strike.

20 THE COURT: That's denied.

21 MR. GREENSPAN: No further questions.

22 THE COURT: All right. Ms. Huang, anything else?

23 MS. HUANG: Nothing further, your Honor.

24 THE COURT: Thank you very much, Dr. Mordecai.

25 THE WITNESS: Thank you, sir.

O4CCeis3

Mordecai - Recross

1 (Witness excused)

2 THE COURT: The government may call its next witness.

3 MS. HUANG: The government calls John Casey, your
4 Honor.

5 MR. TALKIN: Your Honor, without interrupting the
6 proceedings, may I step out for a moment?

7 THE COURT: Would the jury like a break at this
8 time --

9 Ms. Huang what time are we looking at?

10 MS. HUANG: Depending how long the cross is, this
11 should be five minutes.

12 THE COURT: Okay. If it's okay with the jury,
13 Mr. Talkin is going to step out, but I always want to make sure
14 to extend the jury the same courtesy. I think you will
15 appreciate it if we can keep moving and then we'll take our
16 break very shortly.

17 MR. KLEIN: Your Honor, I'm going to do the cross.
18 It's going to be longer than five minutes. I don't want the
19 jury to be upset with me from holding them back from using the
20 facilities.

21 THE COURT: Everyone prepared to proceed at this time?
22 Anyone need a break right now?

23 JUROR: I would.

24 THE COURT: Let's take a short break and we'll do a
25 little bit more and take our midmorning break. So let's come

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Mordecai - Recross

back in 10.

(Jury not present)

(Continued on next page)

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Mordecai - Recross

1 THE COURT: Do we have anything to address?

2 MR. DAVIS: No, your Honor.

3 (Recess)

4 THE COURT: Let's bring in the witness.

5 (Witness present)

6 (Continued on next page)

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O4CCeis3

Casey - Direct

1 (Jury present)

2 THE COURT: Mr. Hernandez, will you please swear in
3 the witness.

4 JOHN CASEY,

5 called as a witness by the Government,

6 having been duly sworn, testified as follows:

7 THE DEPUTY CLERK: Can you please provide the Court
8 your first and last name, and spell your first and last name.

9 THE WITNESS: Yes. My name is John Casey, J-O-H-N
10 C-A-S-E-Y.

11 DIRECT EXAMINATION

12 BY MS. HUANG:

13 Q. Good morning, Mr. Casey. Can you just adjust your mic so
14 it's in front of you so the jury can hear you loud and clear.

15 A. Yes. Is this better?

16 Q. Yes. Perfect. Thank you.

17 Mr. Casey, are you familiar with Mango Markets?

18 A. It is a crypto program.

19 Q. Did you use Mango Markets?

20 A. Yes.

21 Q. Did you have money on Mango Markets?

22 A. Yes.

23 Q. So directing your attention to October 11th, 2022, about
24 how much money did you have on Mango Markets?

25 A. About \$2,000.

O4CCeis3

Casey - Direct

1 Q. And did there come a time when you were unable to access
2 that money?

3 A. Yes.

4 Q. When was that?

5 A. October 11th, 2022.

6 Q. And where were you when that happened?

7 A. I was at Poughkeepsie, New York.

8 Q. And are you familiar with something called Discord?

9 A. Yes.

10 Q. What is that?

11 A. It is a chat app.

12 Q. And did you use Discord?

13 A. Yes.

14 Q. Including did you discuss what happened on October 11th,
15 2022 on Mango Markets?

16 A. Yes.

17 Q. What was your username on Discord?

18 A. Ogjenk.

19 MS. HUANG: Mr. Oshinsky, can you show the witness
20 what's been marked Government Exhibit 817.

21 Q. Mr. Casey, do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. This is a screenshot of my messages on Discord.

25 MS. HUANG: At this time, your Honor, the government

O4CCeis3

Casey - Direct

1 offers Government Exhibit 817 into evidence.

2 THE COURT: Objection?

3 MR. KLEIN: No objection.

4 THE COURT: Exhibit 817 will be admitted.

5 (Government's Exhibit 817 received in evidence)

6 MS. HUANG: Thank you, your Honor.

7 Mr. Oshinsky, can we please publish this to the jury.

8 Q. Let's start from the bottom. Mr. Casey, that ogjenk,
9 that's you, your message?

10 A. Correct.

11 Q. Starting, can you tell us from the bottom up what the time
12 and date is there?

13 A. So the date is October 11th, 2022 at 6:48 p.m.

14 Q. And what is that chart you're showing there?

15 A. That is a screenshot of a chart from Trading View, showing
16 the price of Mango in comparison to USD.

17 Q. Why did you capture that chart at the time?

18 A. Can you repeat that.

19 Q. Why did you capture this chart, why were you displaying
20 this chart?

21 A. I was confused at what was going on.

22 Q. Now let's look up at the chat above. Can you state the
23 date and time for that one?

24 A. Yes. That is October 11th, 2022, 7:05 p.m.

25 Q. What did you write there?

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Casey - Direct

1 A. I wrote, I cannot withdraw right now.

2 Q. What couldn't you withdraw?

3 A. My crypto assets from Mango Markets.

4 Q. Where were you when you wrote this?

5 A. Poughkeepsie, New York.

6 MS. HUANG: Can we go to the top message.

7 Q. What was the date and time for that one?

8 A. That was October 11th, 2022, 7:41 p.m.

9 Q. Can you read that message.

10 A. Yes. I said, is this similar to what happened when Cope
11 spiked up on Mango months ago.

12 Q. What is Cope?

13 A. Cope is another cryptocurrency.

14 Q. What happened with it?

15 A. The price of Cope had spiked up and plummeted down similar
16 to the bottom screenshot.

17 Q. Mr. Casey, did you suffer any losses when Cope spiked up?

18 A. No.

19 Q. Did you suffer any losses on Mango Markets on October 11th,
20 2022?

21 A. Yes.

22 Q. So was the impact of what happened with Cope with the spike
23 several months ago on Mango similar to what happened on Mango
24 Markets on October 11th, 2022?

25 MR. KLEIN: Objection.

O4CCeis3

Casey - Cross

1 THE COURT: Overruled.

2 A. Can you repeat that.

3 Q. Sure. Was what happened with Cope, in terms of the spike,
4 similar to what happened on Mango Markets on October 11th,
5 2022?

6 A. In reference to the spike?

7 Q. Sorry. No. In terms of we talked earlier about your
8 losses.

9 A. Yes. The impact was not similar.

10 MS. HUANG: No further questions, your Honor.

11 THE COURT: Cross examination, Mr. Klein.

12 MR. KLEIN: Yes, your Honor.

13 CROSS-EXAMINATION

14 BY MR. KLEIN:

15 Q. Good morning, Mr. Casey.

16 A. Good morning.

17 Q. When did you first start using Mango Markets?

18 A. Sometime in 2021.

19 Q. And how did you use Mango Markets?

20 A. I deposited cryptocurrency onto it.

21 Q. Do you remember what cryptocurrency you deposited onto
22 Mango Markets?

23 A. I remember I deposited Mango.

24 Q. Where did you get your Mango?

25 A. I purchased Mango.

O4CCeis3

Casey - Cross

1 Q. Where?

2 A. On an exchange.

3 Q. Do you remember which one?

4 A. No.

5 Q. And then what did you do with your Mango on Mango Markets?

6 A. I just had it deposited there.

7 Q. Never traded on Mango Markets?

8 A. Not with the Mango, no.

9 Q. Did you do any other trades on Mango Markets?

10 A. I also deposited some Solana, and I did not trade
11 frequently on Mango.

12 Q. Did you engage in perpetual trading?

13 A. I don't recall.

14 Q. Futures trading?

15 A. I don't recall.

16 Q. Did you log into Mango with a VPN?

17 A. I don't recall.

18 Q. Do you know what a VPN is?

19 A. I do.

20 Q. What is VPN?

21 A. It's a verified private network.

22 Q. What does that mean to you?

23 A. I'm not sure.

24 Q. Is it a way to have your IP address reflect from somewhere
25 else, maybe not the place you're actually sitting in front of

O4CCeis3

Casey - Cross

1 your computer?

2 A. That may be one use of VPN.

3 Q. And you do know that Mango Markets had geo blocking;
4 correct?

5 A. I'm not sure of that, no.

6 Q. You don't remember that?

7 A. No.

8 Q. When you did your trading on Mango Markets, did it ask you
9 where you got your Solana?

10 A. I don't recall.

11 Q. What do you recall about your trading on Mango Markets?

12 A. I'm not sure. I don't understand the question.

13 Q. Well, you conducted some trades on Mango Markets; correct?

14 A. Yes.

15 Q. So what kind of trades -- do you recall any types of trades
16 you did?

17 A. Yeah. I recall swapping Solana into USDC.

18 Q. And did you do any other types of trades?

19 A. I don't recall offhand.

20 Q. And when you purchased your Mango, you owned Mango; right?

21 A. Yes.

22 Q. And you bought that because you wanted it to increase in
23 value; correct?

24 A. I don't want to speculate right now. I'm --

25 Q. I'm not asking you to speculate. I'm asking you when you

O4CCeis3

Casey - Cross

1 purchased your Mango, you hoped it would increase in value;
2 right?

3 A. Correct.

4 Q. You didn't contribute to Mango Markets, right, you just put
5 your cryptocurrency on the Mango; right?

6 A. Correct.

7 Q. You were aware that other people were contributing to
8 Mango; correct?

9 A. Are you talking about in code?

10 Q. Yeah. Other people were providing code; right?

11 A. Yes.

12 Q. Other people were posting blogs about it; right? You were
13 a user, but there were other people contributing to the Mango
14 Markets; right?

15 A. Yes.

16 Q. And you, in those efforts, if Mango Markets became a big
17 success, your Mango token could increase in value, right, if
18 more people started using Mango Markets, the Mango token could
19 be more valuable?

20 A. That's a possibility.

21 Q. Do you know what an oracle is?

22 A. A what?

23 Q. An oracle.

24 A. I think I'm a little familiar. For price.

25 Q. Have you ever heard of Switchboard?

O4CCeis3

Casey - Cross

1 A. I think I have.

2 Q. When you went on Discord, it was on October 11th; right?

3 A. Correct.

4 MR. KLEIN: Can I put up Government Exhibit 817,
5 please.

6 Q. This was the exhibit the prosecutor showed you; right?

7 A. Correct.

8 Q. Now it says here you can't withdraw it at that moment. You
9 were ultimately able to withdraw your cryptocurrency; right?

10 A. After a DAO vote was passed.

11 Q. What was the DAO vote?

12 A. The DAO vote was to give money back so that they can refund
13 the people who couldn't withdraw.

14 Q. And you got refunded; right?

15 A. I did.

16 Q. And you mentioned Cope in here?

17 A. Yes.

18 Q. Cope was an incident months before; right?

19 A. Yeah. I don't remember what month specifically.

20 Q. I'm not asking you what month right now. But it was an
21 incident that occurred before this incident; right?

22 A. Correct.

23 Q. And what do you remember about Cope?

24 A. I don't know exactly what the situation was. That's why I
25 was asking in the Discord.

O4CCeis3

Casey - Cross

1 Q. Did you have any memory at the time back in October what it
2 was or did you --

3 A. I know that Cope was a cryptocurrency and I knew that there
4 was some problem that happened with Cope on Mango Markets.

5 Q. And beyond that, did you know anything at the time?

6 A. I don't know the specifics.

7 Q. You didn't vote on the DAO vote?

8 A. I don't recall voting, no.

9 Q. And then after you got your funds back, did you use Mango
10 Markets anymore?

11 A. I don't recall. I'm pretty sure I got off of it.

12 MR. KLEIN: Thank you.

13 THE COURT: Any redirect?

14 MS. HUANG: None, your Honor.

15 THE COURT: Thank you very much, Mr. Casey. You're
16 good to go.

17 (Witness excused)

18 Government may call its next witness.

19 MS. HUANG: The government next calls Oliver Tonkin,
20 your Honor.

21 OLIVER TONKIN,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 THE DEPUTY CLERK: Can you please provide the Court
25 your first and last name, and spell your first and last name.

04CCeis3

Tonkin - Direct

1 THE WITNESS: My name is Oliver Tonkin. So that's
2 O-L-I-V-E-R, my surname is T-O-N-K-I-N.

3 DIRECT EXAMINATION

4 BY MS. HUANG:

5 Q. Good morning, Mr. Tonkin.

6 A. Good morning.

7 Q. Can you please tell us where you currently live.

8 A. I live in London in the UK.

9 Q. What is your educational background after high school?

10 A. So I graduated from a university in the UK in 1995. I
11 spent two years at law school in the UK. And then more
12 recently, I got an executor MBA in the UK, as well.

13 Q. Where did you work after getting your law degree?

14 A. I qualified at a firm called Norton Rose, which is now
15 Norton rose Fulbright in London.

16 Q. Are you still a practicing lawyer today?

17 A. I am, yes.

18 Q. What is your current job?

19 A. I'm the CEO of a business called BCB Group. We're a London
20 based provider of payment services and trading services for the
21 digital asset industry.

22 Q. Mr. Tonkin, are you familiar with something called Mango
23 Markets?

24 A. I am, yes.

25 Q. How are you familiar with Mango Markets?

04CCeis3

Tonkin - Direct

1 A. So I was a depositor into Mango Markets version 3 between
2 November '21 and October '22.

3 Q. Why did you deposit your funds on Mango Markets?

4 A. So I, in 2021, I sold some shares, some stock in my
5 company. I was paid some of that money in U.S. dollars, and I
6 had no means to hold it in a bank account because I'm a Brit,
7 it's hard to get a U.S. dollar bank account. Because I'm
8 reasonably crypto comfortable, I elected to receive those funds
9 in USDC, so that's like with USD. And then I was looking for a
10 home for that and, for those funds, to earn some kind of return
11 on them. So for a period after I got my USDC, I invested those
12 funds in a platform called RVA, which is a different platform.
13 The returns on that platform at the time weren't great, so I
14 was looking for an alternative home for my USDC. A friend of
15 mine recommended a number of other platforms, which Mango was
16 one. So I, having, you know, had a look, I checked it out. I
17 then moved my funds out of RVA onto Mango.

18 Q. When was that that you first began using Mango Markets?

19 A. November '21.

20 Q. And about how much money did you say you had on Mango
21 Markets?

22 A. So in terms of USDC, I deposited about 122,000 thousand
23 USDC.

24 Q. Earlier when you talked about rates, can you explain what
25 you mean by rates?

O4CCeis3

Tonkin - Direct

1 A. So when one deposits into a different platform, you're paid
2 a reward, a yield, if you like, for putting your money into a
3 platform. It's akin to an interest rate.

4 MS. HUANG: Mr. Oshinsky, can we put up Government
5 Exhibit 1601 just for the witness.

6 Q. Mr. Tonkin, do you recognize this document?

7 A. I do.

8 Q. What is it?

9 A. It's a report of a transaction that I initiated where I
10 transferred my USDC from my own wallet onto the Mango Markets
11 DAO.

12 MS. HUANG: Your Honor, the government offers
13 Government Exhibit 1601.

14 MS. MARTABANO: No objection.

15 THE COURT: Exhibit 1601 will be admitted.

16 (Government's Exhibit 1601 received in evidence)

17 MS. HUANG: Mr. Oshinsky, if you can publish that to
18 the jury.

19 Q. Just to situate us here Mr. Tonkin, do you see where it
20 says "timestamp"?

21 A. I do, yes.

22 Q. Can you tell us what the timestamp is?

23 A. November 21st, 2021.

24 Q. And what's the significance of that date?

25 A. That was the date on which I moved my funds from my wallet

04CCeis3

Tonkin - Direct

1 onto the Mango DAO.

2 MS. HUANG: If we can actually get out of that,
3 Mr. Oshinsky.

4 Q. Further below, it says, "interact with program"?

5 A. Yep.

6 Q. Can you just read those two lines there.

7 A. Sure. Interact with program, Mango Markets version 3,
8 transfer from 24122682.641163 USDC.

9 Q. What do those two lines mean?

10 A. So that was the -- obviously the amount that I moved, the
11 122 number, and it was me moving it from my wallet, as I said,
12 onto version 3, which it was at the time of the Mango Markets
13 protocol.

14 MS. HUANG: We can pull those down, Mr. Oshinsky.

15 Q. Mr. Tonkin, as a user of Mango Markets, are you aware of
16 what a Mango perpetual is?

17 A. Yes, I am.

18 Q. Would it matter to you if you knew that a person was
19 intentionally moving the price of perpetuals on Mango Markets?

20 MS. MARTABANO: Objection, your Honor.

21 THE COURT: Overruled.

22 A. It would matter to, yes.

23 Q. Why would it matter to you?

24 A. Because obviously that puts at risk my funds if someone can
25 manipulate that price. It puts my funds at risk as a

O4CCeis3

Tonkin - Direct

1 depositor.

2 Q. Can you just kind of outline for us what kind of risks
3 those are?

4 A. So if somebody were to move the --

5 MS. MARTABANO: Objection.

6 THE WITNESS: So am I good or --

7 THE COURT: No. Hold on. Sorry, Mr. Tonkin.

8 While I'm looking at this, you might just want to slow
9 down just a little bit.

10 THE WITNESS: Sure.

11 THE COURT: It's overruled.

12 THE WITNESS: I can carry on, yeah?

13 A. Yeah. So if somebody can manipulate the price of a Mango
14 PERP, they could potentially inflate the value of the
15 collateral that they hold on the DAO, and obviously withdraw
16 funds for the value of that collateral, which, again, puts my
17 funds as a depositor at risk.

18 Q. Let's now turn to October 11th, 2022, Mr. Tonkin. Did you
19 have funds on Mango Markets on that date?

20 A. I did, yes.

21 Q. About how much?

22 A. About 124,000 USDC at the time.

23 Q. And did there come a time when you were unable to access
24 those funds?

25 A. Yes. So I woke up one morning in London and accessed the

04CCeis3

Tonkin - Direct

1 platform, and I could see that my funds were there, but
2 something had gone wrong. There was something unusual, let's
3 say, about how the platform looked at the time. So I tried to
4 withdraw funds, I pressed withdraw on the screen, which would
5 normally have given me the option to move my funds out of the
6 DAO back into my wallet, I wasn't able to do that.

7 Q. And just to situate us, when you said early in the morning,
8 do you have a date for that?

9 A. My goodness, was it the 11th, maybe the 12th of October.

10 Q. If that was morning UK time --

11 A. Morning UK time, it would have been either very early
12 morning in New York or very late at night on the other side,
13 west coast.

14 Q. Let's show you what's been marked Government Exhibit 1603.

15 Mr. Tonkin, do you recognize this document?

16 A. I do.

17 Q. What is it?

18 A. So this was a screenshot that I took of my account on
19 version 3 of Mango Markets as it appeared on the 12th of
20 October.

21 Q. But this screenshot was taken recently?

22 A. Yes, it was, yes.

23 Q. Can you just kind of walk us through when it says "account
24 value" there --

25 MS. HUANG: Sorry. Apologies, your Honor.

O4CCeis3

Tonkin - Direct

1 The government now moves for Government Exhibit 1603
2 into evidence.

3 THE COURT: Any objection?

4 MS. MARTABANO: No, your Honor.

5 THE COURT: Exhibit 1603 will be admitted.

6 (Government's Exhibit 1603 received in evidence)

7 MS. HUANG: Mr. Oshinsky, let's publish that to the
8 jury so they know what I'm talking about.

9 Q. Mr. Tonkin, where it says "account value" there, can you
10 tell us what that means?

11 A. So that was the value of my deposit on the Mango DAO on the
12 date of the event or the day after the event, UK time.

13 Q. And you discussed how you had deposited USDC, and you see
14 there's a USDC row there?

15 A. Yep.

16 Q. And you see how there's deposits?

17 A. Yep.

18 Q. And there's the same number approximately?

19 A. Yep.

20 Q. Do you see how there's a deposit/borrow APR column?

21 A. I do.

22 Q. Can you explain to us what that column is representing
23 there?

24 A. So, under normal circumstances, that would be the interest
25 rates that either you earn -- that's the annualized interest

O4CCeis3

Tonkin - Direct

1 rates that you earn either as a depositor, which is in green,
2 or if you were borrowing from the DAO, in red.

3 Q. And can you tell us what the interest rate was at that time
4 for USDC?

5 A. Well, on the screen here, it's 300 percent, both to deposit
6 and to borrow.

7 Q. And that's for October 11th, 2022?

8 A. Correct.

9 Q. Was that the rate you were typically getting?

10 A. It was not.

11 Q. What was rate you were typically getting?

12 A. Anywhere between 1 and 3 percent annualized.

13 Q. Do you know why that rate would have gone from your typical
14 1 to 3 percent on Mango Markets up to 300 percent?

15 A. It would have suggested --

16 MS. MARTABANO: Objection, your Honor. A yes or no
17 would be fine, your Honor.

18 (Continued on next page)

O4AAAEIS4

Tonkin - Direct

1 THE COURT: I was going to suggest that -- answer to
2 that question, yes or no.

3 THE WITNESS: What was the question again? Sorry.

4 Q. My question was, do you know why your typical one to four
5 percent rose to three?

6 A. Yes.

7 Q. Tell us why?

8 A. So that was the rates as they are here would have indicated
9 that the Dow was effectively one hundred percent utilized. So
10 all deposit available funds had been withdrawn and were being
11 utilized by one or more borrowers.

12 Q. And earlier you testified about how you couldn't withdraw
13 your funds from Engle market?

14 A. Correct.

15 Q. What was your reaction when you couldn't access your funds?

16 A. Concern, dismay, confusion.

17 Q. Was that a significant amount money for you?

18 A. Yes, it is, yes.

19 Q. What was your understanding of what happened to all the
20 users funds on the Mango Markets platform?

21 MS. MORTABANO: Objection.

22 THE COURT: You are referring to his understanding at
23 the time?

24 MS. HUANG: Yes, your Honor.

25 THE COURT: It's overruled.

O4AAAEIS4

Tonkin - Direct

1 A. At the time I saw these rates?

2 Q. Yes.

3 A. Well, I mean I did do some further investigation on the
4 platform itself and it did become clear that all the funds had
5 been withdrawn. As to why --

6 THE COURT: Hold on.

7 Why don't you ask another question.

8 Q. Can you explain to us why?

9 A. What I could see because there were. I have a shot more of
10 it, of the other charts of the various assets that are
11 available. What I did see was the price of the MNGO token
12 which is the native token of platform had late that night, my
13 time, spiked a lot for a short period of time and then going
14 down again. So that obviously led me to do some further
15 investigation. I then discovered based on some wider
16 reading --

17 THE COURT: Hold on. Do we have an objection?

18 MS. MORTABANO: Yes, your Honor.

19 THE COURT: Okay. The objection is sustained.

20 Ms. Huang.

21 MS. HUANG: Thank you, your Honor.

22 Q. Mr. Tonkin, as someone with funds on the Mango Markets
23 protocol, would it have mattered to you if you knew that
24 someone was borrowing from the platform without intending to
25 maintain collateral or interest?

O4AAAEIS4

Tonkin - Direct

1 MS. MORTABANO: Objection.

2 THE COURT: Very brief side bar.

3 (Continue on next page)

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O4AAAEIS4

Tonkin - Direct

1 (side bar)

2 MS. MORTABANO: Your Honor, I think the question was
3 compound. In addition to addressing issue, no conclusions,
4 they have presented him as an attorney you know, and they're
5 seeking to sort of suggest that he is the one who's had the
6 authority on all this, but also just confusing. You said would
7 it have mattered to you, compound, if it was interest or this
8 or that.

9 MS. HUANG: I think I was specifically using exact
10 wording of the letter we had submitted to you, literally, exact
11 phrasing.

12 THE COURT: What is the question again?

13 MS. HUANG: The question is would someone funding a
14 protocol -- and a follow up of why.

15 THE COURT: The why is an issue I think with this
16 witness because you elicited that he had some legal training.
17 So I think that's the concern. So tell me why it's not a
18 concern because I think Ms. Mortabano's point is that as a
19 lawyer, given that you've established that he has legal
20 training, is practicing as a lawyer, if he were to say why and
21 in response say because I was losing all my money, that would
22 be certainly within bounds.

23 If he is going to explain and I cut him off as he is
24 about to get into things he'd read, but if he is going to get
25 into, well, I thought it was this kind of conduct, that sort of

O4AAAEIS4

Tonkin - Direct

1 thing, then I understand the nature of the objection. So you
2 can have an offer of proof some different way but I think it's
3 a wide question. You may get all the milage that you need by
4 asking that it did in fact matter to him because already did --
5 and I -- what's your response?

6 MS. HUANG: Your Honor, I think specifically in the
7 defense's 3500 material he doesn't come from a legal angle,
8 just purely comes out -- as a. In terms of him as using not
9 from the legal standpoint what his conduct means rather how
10 this affects him.

11 THE COURT: How is this different from the prior line
12 of questioning? You asked the why question before.

13 MS. HUANG: That is about the Mango perpetuals.
14 That's one potential changing that -- this one is without the
15 intention to repay or maintain without the -- or interest.

16 THE COURT: And your argument is that under -- and
17 other cases that that -- what issue does it go to?

18 MS. HUANG: Material --

19 THE COURT: Okay. I am going to overrule the
20 objection.

21 MS. MORTABANO: Your Honor, just one more. The 3500
22 also him saying things that I think this was manipulation use
23 of official terms and saying there's even documents where he
24 says it wasn't a regulated market. So I'm not sure how it
25 would apply. So he has, I don't know which specific line of

O4AAAEIS4

Tonkin - Direct

1 the 3500 she is talking about. The 3500 certainly has him
2 commenting on things like the legal implication and why he felt
3 something was manipulative or not or anything like that.

4 So I just, I understand there may be one portion. All
5 he says is what Ms. Huang has represented. But I still think
6 there is a very big risk when she asks general questions he is
7 clearly speaking a thousand miles a minute, just know this and
8 kind of spewing. So I just reiterate my concern he is getting
9 that are not --

10 THE COURT: If you can modify the question just a
11 little bit to make sure that you are not going to risk
12 eliciting any sort of analysis or testimony from the
13 perspective of a lawyer, I think you preface the question by
14 saying "a user of Mango Markets" and maybe you could add and
15 solely in terms of funds or something of that nature that he
16 could really answer in that perspective and I'll overrule the
17 objection.

18 MS. HUANG: Your Honor (Reading).

19 THE COURT: Yes. Okay. Thank you.

20 (Continued on next page)

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O4AAAEIS4

Tonkin - Direct

1 (In Open Court)

2 THE COURT: Ms. Huang, you may proceed.

3 MS. HUANG: Thank you, your Honor.

4 Q. Mr. Tonkin, as someone with funds on Mango Markets'
5 protocol and I want this solely from your perspective as a
6 depositor, would it have mattered to you if you knew that
7 someone was borrowing from the platform without intending to
8 maintain collateral or pay interest?

9 A. Yes, it would have bothered me.

10 Q. Why? And again, I want it solely from your perspective.

11 A. Because if somebody borrows from a platform and they don't
12 effectively intend to repay the money or to keep collateral to
13 the extent of the wider depositors pool position, of course
14 that puts my funds at risk. So, yes, it would have bothered
15 me.

16 Q. And, Mr. Tonkin, did you eventually receive your funds
17 back?

18 A. I did.

19 Q. How long was it?

20 A. I think about two weeks.

21 Q. Who provided those funds to you?

22 A. So it was a mixture. So it was partly from the Mango own
23 treasury but it was also from funds which had been provided by
24 the individual responsible for the event who again, had
25 returned some funds to the Dow in order to facilitate a

O4AAAEIS4

Tonkin - Direct

1 repayment or invest the funds.

2 Q. Could you just describe that time when you couldn't receive
3 these funds?

4 MS. MORTABANO: Objection.

5 THE COURT: Ms. Huang, could you rephrase that?

6 MS. HUANG: Sure.

7 Q. How would you describe this time when you couldn't access
8 your funds?

9 A. For me personally it was --

10 MS. MORTABANO: Same objection, your Honor.

11 THE COURT: Yeah. I think if you could -- I'll
12 sustain the objection but I think you just need to make it a
13 little bit more specific as to what you are referring to.

14 Q. Now would you describe that two-week period or so when you
15 couldn't access your funds on Mango Markets?

16 MS. MORTABANO: Same objection.

17 THE COURT: I'll overrule the -- I think if you just
18 are more specific about what you mean by "describe a time
19 period".

20 Q. How did you feel during this time?

21 A. I felt concerned. As I said, I'm not poor, but \$124,000 to
22 lose is a material amount money for me. So I was concerned.
23 It was unsettling. I was worried and felt a little powerless,
24 frankly.

25 MS. HUANG: No further questions. Thank you.

O4AAAEIS4

Tonkin - Cross

1 THE COURT: Thank you, Ms. Huang.

2 Ms. Mortabano?

3 MS. MORTABANO: Yes, your Honor. Thank you.

4 CROSS-EXAMINATION

5 BY MS. MORTABANO:

6 Q. Good morning, Mr. Tonkin.

7 A. Hi.

8 Q. Thank you for your time this morning. I just wanted to get
9 a little bit more into what your company, BCG Group does. I
10 believe you described a provider of business accounts --

11 A. BCG.

12 Q. Yes.

13 A. Yes.

14 Q. Could you just explain a little bit more to the jury --

15 A. Sure. So it's business. It's we operate out of London,

16 Paris and Switzerland. So we provide settlement role

17 effectively some of the very large OTC desk exchanges.

18 Liquidity providers they use our platform to settle their

19 trades with each other. And that's fiat currency, not crypto.

20 But we also provide other trading services. So for an exchange

21 services again to the industry, crypto trading. So to the

22 crypto trading. If someone wants to provide either fiat or Bitcoin,

23 whatever, they can do it through us. And we also do custody

24 services as well.

25 Q. Thank you. Who are the BCG Group's customers generally?

O4AAAEIS4

Tonkin - Cross

1 Are they individuals or corporations?

2 A. They are all corporations.

3 Q. And when you onboard your corporate clients, do you ask
4 their company names?

5 A. Yes.

6 Q. Do you ask for their country or their state of residence?

7 A. Yes.

8 Q. Do you ask for any other corporate documents such as tax
9 identifying --

10 A. All that stuff, yeah. All the standard and all the right
11 type stuff that you'd expect.

12 Q. Can you explain for that jury what AML is.

13 A. And anti-money laundering. It will be --

14 MS. HUANG: Objection, your Honor.

15 THE COURT: Overruled.

16 A. Evidence of who you are, where you are incorporated,
17 directors are, who your ultimate beneficial owners, who your
18 owners are, what business, what your business model is, flow of
19 funds is, all that kind of stuff.

20 Q. Do you require any written agreements with your customers?

21 A. Yes.

22 Q. What kinds?

23 A. There will be terms and conditions of service. There'll be
24 a trading agreement where people trade. There'll be a custody
25 agreement where people want to hold crypto with us. That kind

O4AAAEIS4

Tonkin - Cross

1 of thing.

2 Q. And are those documents provided physically to your
3 customers and they have to sign them or just click through
4 them?

5 A. No. We do electronic signing as a rule.

6 Q. Did Mango Markets have anything like that when you
7 deposited your crypto in November 2021?

8 A. There was nothing that I had to sign, no.

9 Q. Were there requirements that you provide your name?

10 A. I don't believe so, no.

11 Q. Any kind of identification?

12 A. No.

13 Q. Your address?

14 A. No.

15 Q. Your income?

16 A. No.

17 Q. Your assets?

18 A. No.

19 Q. You didn't have to sign any documents as I believe you just
20 said? Did they have any terms of service that you had to agree
21 to?

22 A. Nothing that I had to agree to, no.

23 Q. Did they require any information about the source of your
24 funds that you were going to be depositing with Mango Markets?

25 A. They did not.

O4AAAEIS4

Tonkin - Cross

1 Q. Do you require any kind of information at BCG?

2 A. Yes.

3 Q. What kind of information do you require relating to source
4 of fund?

5 A. It'll typically be --

6 MS. HUANG: Objection, your Honor.

7 THE WITNESS: Sorry.

8 THE COURT: Overruled.

9 A. So from the context of a corporate, it'll be maybe
10 financial statements, bank statements, that kind of thing.

11 Q. Okay. I assume if you had a client who had funds that
12 looked like they may be from stolen funds, would you allow them
13 to deposit with you?

14 MS. HUANG: Objection, your Honor.

15 THE COURT: Overruled.

16 MS. HUANG: Could we please approach, your Honor.

17 THE COURT: Yes.

18 (Continued on next page)

O4AAAEIS4

Tonkin - Cross

1 (side bar)

2 MR. DAVIS: I fail to see what the relevance is of
3 this witness's own businesses practices and procedures. It
4 appears what counsel is trying to do is a comparison between a
5 random company and Mango Markets. I don't see the relevance of
6 that at all.

7 Point Two is defense counsel being concerned about the
8 witness's being a legal expert. Now we are a getting into
9 terms such as AML and continuing to ask about practices. I
10 don't understand the real advantage of this.

11 THE COURT: Counsel?

12 MS. MORTABANO: Your Honor, we are not the ones who
13 are trying to compare Mango Markets to traditional finance over
14 and over and over. All of these terms map on to Mango Markets.
15 The government is the one saying that this was commodities
16 fraud, perpetuals are futures, all that. Their position is to
17 constantly compare them to traditional finance. It is relevant
18 when they are talking about what a belief may or may not have
19 understood about what was required on the Mango Markets, the
20 intent of whatever user terms, their understanding that people
21 would be depositing funds with the intent to repay. That there
22 is a big distinction between organized finance, which in fact
23 requires that you have written agreements with intents to
24 repay, written representations about who you are, recourse
25 against those individuals which you do not have against anyone

O4AAAEIS4

Tonkin - Cross

1 at Mango Markets. So those distinctions matter to the jury
2 when they have continued to argue -- well, people were putting
3 their money in and they expected things to be repaid, that
4 expectation --

5 THE COURT: I got it. You are saying that this goes
6 to materiality.

7 MS. MORTABANO: Yes.

8 THE COURT: And you are not going to ask the witness
9 as to any legal or legal adjacent matter?

10 MS. MORTABANO: No.

11 THE COURT: You are getting, as I understood it,
12 counsel was asking about the surface level, like what was
13 required. And if you do, if there was an objection to
14 questions you got deeper into that, then I would sustain those
15 objections for the reasons that counsel saying.

16 In terms of why these questions are relevant, given
17 that this witness has been presented as a witness on
18 materiality, I think it's fair and given that his employment
19 and the circumstances under which he became like earned the
20 USDC that he then deposited and bank -- or elicit on direct
21 examination it's fair at this level for defense to inquire as
22 to those issues. So the objection is overruled.

23 (Continued on next page)

24 (In Open Court)

25 BY MS. MORTABANO:

O4AAAEIS4

Tonkin - Cross

1 Q. I believe we were getting into the facts that BCG requires
2 a lot of documentation both written and signed with its
3 customers when they are engaging in crypto exchange
4 transactions and other transactions with you; is that a fair
5 characterization?

6 A. Well, we're a regulated business, so yes.

7 Q. Okay. Again, Mango Markets didn't require any of those
8 things from you when you deposited your USDC?

9 A. No.

10 Q. And you didn't have any kind of written agreement with
11 Mango Markets, no contract that you signed with them?

12 A. No.

13 Q. In theory could you have put funds that were stolen onto
14 Mango Markets?

15 A. Could I?

16 Q. Yes.

17 A. Well, no, because I haven't stolen any funds.

18 Q. Not to impugn you, Mr. Tonkin, but there was no question
19 asked by Mango Markets of, are these stolen funds or even a
20 warning that said stolen funds cannot be deposited?

21 A. That's not how Dows work.

22 Q. How did you understand the Dow to work?

23 A. Well, at a high level or a more minor level, I can give you
24 a high level.

25 Q. That would be great.

O4AAAEIS4

Tonkin - Cross

1 A. So. The way Dows work is you have depositors who deposit
2 funds and you also have borrowers. You can either borrow funds
3 against funds they've deposited, the collateral or they can
4 trade on the platform again with funds that they deposited on
5 that platform.

6 Q. Thank you. When you deposited your funds did you make any
7 verbal promises to do anything to Mango Markets with respect to
8 your funds?

9 A. Any verbal promises?

10 Q. Yes.

11 A. Well, no. There was no one to speak to, so no.

12 Q. Exactly. Did you make any written promises to Mango
13 Markets?

14 A. No.

15 Q. I assume just to confirm it, didn't ask you to make --

16 A. No.

17 Q. You were depositing your funds for liquidity pools, is that
18 right, just earning an interest rate?

19 A. Yes.

20 Q. You didn't make any specific verbal or written
21 representation with your USDC when you deposited in 2021?

22 A. No, I did not.

23 Q. Did that change at this point in time between 2021 and when
24 you went through your funds?

25 A. No.

O4AAAEIS4

Tonkin - Cross

1 Q. Do you remember, did you happen to click through any kind
2 of terms service, pop-up or any kind of warning on the Mango
3 page?

4 A. I don't recall that, no.

5 MS. MORTABANO: Okay. Mr. Smith, if we could show the
6 jury and Mr. Tonkin GX 1010.

7 (Pause)

8 Q. Looking at that website --

9 A. It may have. I don't recall it. If you say it was there,
10 I believe you.

11 Q. Okay. That says you know if you look at version three,
12 protocol is in public beta. This is unaudited software. Use
13 it at your own risk.

14 A. Yep.

15 Q. Do you remember knowing that when you --

16 A. I do remember the version three was in early stage, yes.

17 Q. Do you see that there's a check box that says I understand
18 and accepts the risks.

19 A. Yep.

20 Q. Looking at that, would you understand that you need to
21 check that in order to move forward?

22 A. I would say so, yes.

23 Q. Is it safe to assume that if you moved forward you most
24 likely saw that and checked it.

25 A. That's a safe assumption to make, yes.

O4AAAEIS4

Tonkin - Cross

1 Q. I want to talk a little bit about your experience in
2 crypto. Do you personally use other exchanges?

3 A. Yes, I do yes.

4 Q. Which ones have you used?

5 A. I've used several, Bit Stamp. I've used Cracken. I've
6 used Coin Base, Crypto.com. Those would be the ones.

7 Q. Okay. I'm going to walk you through those. For Bit Stamp
8 do you remember where were there terms of service that you had
9 to agree to to be part of that?

10 A. Yes.

11 Q. Did you read those terms of service?

12 A. Probably.

13 Q. Probably?

14 A. Well, I mean you see them, you scan them and you just click
15 yes. I would have glanced at them, yes.

16 Q. Same for Cracken?

17 A. Yeah.

18 Q. Same for Coin Base?

19 A. Yes.

20 Q. Same for Crypto.com?

21 A. Yes.

22 Q. You had mentioned that the USDC that you put into Mango
23 Markets you'd gotten from selling stock in your business when
24 you were paid in U.S. dollars?

25 A. Correct.

O4AAAEIS4

Tonkin - Cross

1 Q. You could have simply switched that into British pounds?

2 A. I could have.

3 Q. Why didn't you?

4 A. Well, at the time the pound wasn't having a great time of
5 it on the foreign exchange market. So I was reluctant at the
6 time to take pounds. And I was going to wait and see what was
7 going to happen to the markets before I repatriated those funds
8 into pounds.

9 Q. You didn't want to stuff them into a mattress?

10 A. I did not.

11 Q. You mention that you didn't have a U.S. bank account and it
12 would be kind of hard to get. Could you explain that?

13 A. It's just very hard for a non U.S. resident getting a U.S.
14 dollar bank account isn't very easy. So it's just not very
15 easy. I don't know what else to say.

16 Q. So you converted them to USDC and you deposited them into
17 Aveh protocol. I believe you said you thought that was about a
18 half a percent?

19 A. Rates at this time were quite low. They fluctuate
20 everyday. Generally, they were pretty low yeah.

21 Q. And you wanted to earn some kind of return on you are USDC?

22 A. Yeah.

23 Q. You were looking for a better rate. How did you learn
24 about Mango Markets?

25 A. Well, I have friends in the industry. So we kind of talk

O4AAAEIS4

Tonkin - Cross

1 and I just asked, does anyone know of any interesting protocols
2 which one can use and this was one and Mango was one of them
3 that AML mentioned.

4 Q. Did you pick Mango because it had a higher interest rate?

5 A. Yes.

6 Q. Was there anything else about Mango that made you choose
7 Mango?

8 A. Not in particular. There was, it's on the -- Solana
9 protocol. I think it's a really interesting system. So that
10 was an attraction.

11 Q. Okay. But it being on the Solana protocol meant you
12 actually had to take a couple extra steps to switch it?

13 A. I did.

14 Q. Can you briefly else tell us what those steps were?

15 A. Aveh operates on the Ethereum protocol. So when you
16 acquire USDC it's wrapped in Ethereum. So you can use it on
17 ELC 20 or Ethereum based platforms because Solana base, I had
18 swapped my Ethereum back to USDC for Solana wrap USDC and then
19 do that.

20 Q. About how long did that take you?

21 A. A few minutes.

22 Q. And I think that you mentioned that at the time Mango had
23 somewhere between a one and three percent interest rate?

24 A. Yeah.

25 Q. You don't remember more?

O4AAAEIS4

Tonkin - Cross

1 A. I don't remember. It did fluctuate. As I said, it was
2 typically between about one a three.

3 Q. Even one percent is still two times what you would have
4 been getting at Aveh, right?

5 A. Yeah.

6 Q. What, if any, research did you do other than that
7 conversation with your friend before you signed on to Mango
8 Markets?

9 A. So I, the platform, I looked at the there's kind of a Q and
10 A page near the -- dot stock. I am sure you talked about it
11 earlier in discussion. Yes, the stamps, there's Q and A --
12 other people, two of the Mango guys. That was what I did.

13 MS. MORTABANO: Okay. Mr. Smith, if you could bring
14 up GX 1011, already admitted into evidence.

15 (Pause)

16 Q. Mr. Tonkin, I believe this is one of those documents that
17 is on DOCCS Mango Markets.

18 A. It's blank right now but if you go down.

19 MS. MORTABANO: So it's a cover page. Then if you can
20 scroll down, Mr. Smith, to page one.

21 (Pause)

22 A. That looks this would be the version three one, which isn't
23 available any more but that looks familiar.

24 MS. MORTABANO: If I could direct to you page 110.

25 Q. Mr. Tonkin, this page mentions liquidations.

O4AAAEIS4

Tonkin - Cross

1 A. Yes.

2 Q. Did you mention anything about liquidations on the Mango
3 Markets platform?

4 A. At a high level, yes.

5 MS. MORTABANO: That first paragraph and the second
6 heading we could blow that up says: Every bank account must
7 have a health above zero. If it slips below zero liquidators
8 can start liquidated the account until the init health is above
9 zero. The liquidator will force-ably cancel all open orders
10 before paying off any liabilities in the account and
11 withdrawing the assets (defined as positive perp balances or
12 token deposits). The liquidator earns the liquidation fee
13 which differs for each spot asset and perp contract.

14 Q. Did I read that correctly?

15 A. I believe so, yes.

16 MS. MORTABANO: If I could get the paragraph right
17 below that.

18 (Pause)

19 MS. MORTABANO: If at the end of the liquidated
20 instruction the account has no assets but still has liability,
21 then the account is placed under bankruptcy.

22 Q. Is that correct?

23 A. Yes.

24 Q. So for the liquidations was your understanding based on
25 this document or your experience, that once an account was

O4AAAEIS4

Tonkin - Cross

1 eligible for liquidation there was no recourse? You couldn't
2 as the person being liquidated say wait, wait, but I intend to
3 repay and stop it; is that right?

4 A. That's one interpretation of it, yes.

5 Q. There's no sort of repo man that you can fight with and
6 there's no bank that you can say wait, please, don't liquidate
7 me?

8 A. Again, that's a reading of it, yeah.

9 Q. Okay. You'll notice that in the next sentence this says:
10 During bankruptcy the liquidator continues offsetting
11 liabilities but receives USDC from the insurance fund.

12 So is your understanding that if an account went into
13 bankruptcy, meaning there was no collateral left and they were
14 liquidated, in fact, the insurance funds set up by Mango
15 Markets is what would then pay the balance of that debt?

16 A. That's what it says, yeah.

17 Q. Then says if there's no more USDC in the insurance fund
18 there will be socialized loss event. What did you understand
19 socialized loss event to be?

20 A. If you say it's a shortfall, all depositors bear a pro rata
21 share of that loss.

22 Q. Mango Markets had three options in place if someone's
23 collateral was liquidated. First, if they went into a
24 negative -- first, they took all the person's collateral that
25 is on the protocol, correct?

O4AAAEIS4

Tonkin - Cross

1 A. Yeah.

2 Q. After that they then went to the insurance fund on the Dow,
3 correct?

4 A. That's what it says, yes.

5 Q. After that they would then do a socialized loss event if it
6 was necessary which is basically sharing the loss among the
7 user?

8 A. Yes.

9 Q. No where in here does it say they're going to sue the
10 bankrupt person. They don't know who that is, right?

11 MS. HUANG: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. Is there any way that they can have any recourse against
14 the bankrupt account beyond that liquidation as far as you
15 understood it?

16 THE COURT: You may need to rephrase your question.

17 Q. Did you understand that Mango had any way to identify, let
18 alone pursue the loss itself from the person who had a bankrupt
19 account according to these documents and your understanding at
20 this time?

21 MS. HUANG: Objection, your Honor.

22 THE COURT: Overruled.

23 A. Unless somebody actually revealed themselves later, no.

24 Q. And based on this document, this doesn't contemplate one
25 being revealed later or even pursuing them according to the

O4AAAEIS4

Tonkin - Cross

1 language here?

2 MS. HUANG: Objection, your Honor.

3 THE COURT: That's sustained.

4 Q. Turning to page 111 of this document, this describes the
5 insurance fund and in fact advertises to users the Mango
6 Markets' program as a \$70 million Dow controlled treasury or
7 insurance on version three deposits when bankrupt accounts --

8 A. That's what that says, yes.

9 Q. Were you aware of that \$70 million Dow in the insurance
10 fund when you deposited into Mango Markets?

11 A. The 70 million number, I was aware that the fund existed,
12 yes.

13 Q. Would you have considered 70 million to be a significant
14 insurance fund in terms of value?

15 A. Based on the assets that were deposited at the time, yes.

16 MS. MORTABANO: Moving on to next page, 112.

17 THE COURT: Ms. Mortabano, how much time do you have
18 left?

19 MS. MORTABANO: Maybe ten minutes.

20 THE COURT: Okay. We'll we will --

21 MS. MORTABANO: Hopefully less, your Honor.

22 If you could just blow-up the entire portion.

23 Q. Mr. Tonkin, you can review it. Mr. Tonkin, if you could
24 take a look at this socialized loss and just confirm this is
25 your understanding of how the socialized loss system worked.

O4AAAEIS4

Tonkin - Cross

1 A. Yep.

2 MS. MORTABANO: Great. You can take that down
3 Mr. Smith. Thank you.

4 Q. Mr. Tonkin, you didn't do any trading on Mango Markets
5 platform, correct?

6 A. I did not.

7 Q. Do you have any understanding of how MNGO-PERP worked?

8 A. I had a high-level understanding. I'm not a professional
9 trader as such. So I knew enough but not at a granular level
10 no.

11 Q. Sorry. When you deposited your USDC did you receive Mango
12 tokens?

13 A. No.

14 Q. You never owned any Mango token?

15 A. No.

16 Q. I believe that you discussed with the government that the
17 Mango Markets founders provided their perspective --

18 MS. HUANG: Objection.

19 THE COURT: That's sustained.

20 MS. HUANG: Objection, your Honor.

21 THE COURT: You may need to rephrase your question.

22 MS. MORTABANO: Thank you, your Honor.

23 Q. Mr. Tonkin, were you part of the Mango discord?

24 A. At the time of October '22, yes, I was.

25 Q. When did you join the Mango discord?

O4AAAEIS4

Tonkin - Cross

1 A. I am going to say earlier that year.

2 Q. Okay. On the day in question, October 11, October 12,
3 given the time change were you sleeping when --

4 A. I was sleeping, yes.

5 Q. So you only learned about it after the fact?

6 A. I learned about it at about eight a.m. that morning UK
7 time.

8 Q. You weren't actively trading on the platform when that
9 happened?

10 A. No.

11 Q. You mentioned that you had approximately \$124,000 on the
12 platform and you were ultimately made whole?

13 A. I was, yes.

14 Q. I believe you initially deposited around \$122,000 on the
15 platform and withdrew \$124,000?

16 A. That's correct.

17 Q. I just have a few more.

18 Have you ever met Mr. Eisenberg?

19 A. No.

20 Q. Spoken to him on the phone?

21 A. No.

22 Q. Over Zoom?

23 A. No.

24 Q. What's App?

25 A. No.

O4AAAEIS4

Tonkin - Redirect

1 Q. Text?

2 A. Nope.

3 Q. E-mail?

4 A. Nope.

5 Q. Discord?

6 A. Nope.

7 Q. Any way?

8 A. Nope.

9 Q. Has he ever made any representations to you directly?

10 A. He has not.

11 MS. MORTABANO: No further questions, your Honor.

12 THE COURT: Thank you. Ms. Huang.

13 MS. HUANG: Very, very briefly, your Honor.

14 Mr. Smith, can you please pull up Government Exhibit
15 1011 please.

16 (Pause)

17 REDIRECT EXAMINATION

18 BY MS. HUANG:

19 Q. Mr. Tonkin, this is what you reviewed a little earlier ago?

20 A. Yes.

21 Q. You remember earlier you talked about reviewing the
22 frequently asked questions?

23 A. Yes.

24 MS. HUANG: Can we turn to page 126 of this document.

25 (Pause)

O4AAAEIS4

Tonkin - Redirect

1 Q. Mr. Tonkin, are these the FAQs you were talking about?

2 A. Yes.

3 Q. Were the FAQs used to help you understand what is expected
4 on the platform?

5 A. Sorry. What to expect. Yes, yes, yes.

6 MS. MORTABANO: Objection.

7 THE COURT: Overruled.

8 Q. Mr. Tonkin, can you just read the question and answer for
9 the "What Prevents Someone"?

10 A. What represents someone from borrow funds, with drawing and
11 running away with it? Our system checks deposits, positions
12 and borrows accounts to ensure that an individual cannot
13 withdraw more than the equity calculated by val deposits, plus
14 val especially orders, minus val (borrows).

15 MS. HUANG: Thank you, Mr. Tonkin. No further
16 questions.

17 MS. MORTABANO: No further questions, your Honor.

18 THE COURT: Okay. Thank you very much.

19 THE WITNESS: Thanks a lot. Thank you.

20 THE COURT: All right. Well, I've eaten into your
21 promised time and I recognized that. So I'll give you little a
22 bit on this end. So we'll come back at 1:20. So let's say
23 1:30. Just to be generous, take a little extra time.

24 Thank you, members of the jury. we are still making
25 excellent time and we're doing very well. So I think we'll

O4AAAEIS4

Tonkin - Redirect

1 take a little bit extra time right now. Come back at 1:30.

2 All rise for the jury.

3 (Jury not present)

4 THE COURT: All right. Please be seated.

5 Ms. Huang or whoever wants to address it, I gave the
6 jury until 1:30 with the expectation that we'd be able to
7 finish on time given who we have left. If that's not right,
8 let me know.

9 MR. BURNETT: I expect the direct for Special Agent
10 LeGrange to be where someone half an hour and 45 minutes
11 depending on how fast she reads. Basically, I don't know how
12 long cross is but that should put us on track to finish today.

13 THE COURT: Is that your final witness?

14 MR. BURNETT: Yes.

15 MR. TALKIN: I do not expect the cross to be very long
16 with that witness.

17 THE COURT: Okay. Any issues other than Exhibit 401
18 to address before we break?

19 MR. DAVIS: No other issues before the break.
20 Unfortunately, because this is our next witness, that really
21 plays in how we have to rearrange documents in the next little
22 bit but of course we will adjust to whatever the Court sees
23 fit.

24 THE COURT: Now, well, let me ask you a question, if I
25 were to accept the defendant's completeness objection, would

O4AAAEIS4

Tonkin - Redirect

1 you then reduce that exhibit or would you put it in with just
2 the addition? I'm trying to understand the timing here and you
3 don't have to make a definite at this time. I just want to
4 understand.

5 MR. DAVIS: Yes, your Honor. If the Court rules that
6 the Tweet needs to be included, we will not introduce that
7 exhibit. So let me just ask you a question. Then I'm going to
8 think about this just during our break, which is so let me take
9 a step back.

10 So, Ms. Mortabano, were there any cases that you
11 wanted me to consider before I render my decision?

12 MS. MORTABANO: I confess, your Honor, I have not had
13 chance to look at it. We have someone in California.

14 THE COURT: We've got like ten minutes and then
15 Mr. Davis.

16 So here is the issue that I'm struggling with because
17 I'm with you on Lumiere and Campos. I see the standard. No
18 end run and the hearsay rule. I understand than that. And I'm
19 even with you for most of the content of Exhibit 401. The one
20 thing that's a little bit troubling to Court is that the
21 specific line that comes out of the, at least the defendant
22 submits comes out of the article. And I'm with you that he is
23 putting it out there in the Tweet so that he is at least
24 arguably adopting that statement. So I'm again, still with
25 you. The statement as to why that statement is relevant, it

O4AAAEIS4

Tonkin - Redirect

1 seems to be his use of this term "manipulation", which as we've
2 been going back and forth in this case numerous times is a
3 legal term of art.

4 So if that statement is coming in, in fairness under
5 Campos and all of these cases, wouldn't it be a proper
6 completing statement to put in the Tweet that is referenced in
7 that exact conversation given that he is telling the person who
8 he just referred to the statement, you know, he is saying it's
9 manipulation, but wouldn't that be a proper conclusion for the
10 jury to also understand that at that same time he referred the
11 other participant in the conversation to Tweet that expressed
12 his view whether it's believable or not, that it was not a,
13 that he did not believe his actions were not real. So just
14 help me with that.

15 MR. DAVIS: I want to be crystal clear about the
16 Tweets. The link before he uses the word "manipulate" in an
17 article.

18 THE COURT: I understand that. That's where the
19 defendant says he is getting that language from austerity sucks
20 Tweet. I'm saying that you are putting it in. I think like in
21 terms of that line because he is using the term "manipulation"
22 and because you believe it's highly probative to the
23 characterization of his conduct, it would be irrelevant because
24 it shows his understanding of what he was doing, right? And
25 that goes to manipulative intent which is one of the key issues

O4AAAEIS4

Tonkin - Redirect

1 in this case.

2 I'm saying that why wouldn't it be not just kind of
3 end run around the hearsay rule and not just kind the Lumiere
4 situation to put in the Tweet that he references in the same
5 conversation where says everything that I did was totally
6 legal.

7 MR. DAVIS: Two responses to that. First, to that
8 particular sentence does more than just use the manipulate, it
9 describes the conduct that he did -- two to three million
10 dollars to manipulate the underlying markets. And so that's
11 point one. And the reason that's important is because this
12 puts it even more on all fours. This is exactly what Judge
13 Rakoff was talking about.

14 In that case, the paragraph we read together, the
15 difficulty was trying to put in a separate recording where he
16 said something to the effect of like, I didn't know it was his
17 own exculpatory sentences. Take for example, his statement
18 that platforms explanation of marks kind of made sense. That's
19 exactly what the Court is suggesting here, that there is a
20 separate writing where the defendant is taking a separate view
21 where everything he did was innocent.

22 THE COURT: That wasn't the statement in Lumiere.
23 However, the reasoning in the decision did not address that
24 particular issue because the way Judge Rakoff characterized
25 what was going on the other parts of the statement in being put

O4AAAEIS4

Tonkin - Redirect

1 in simply gave historical facts about what happened. And so in
2 that context it would not be a proper completion to put in
3 self-serving statements about intent. That's at least how it
4 was characterized when you get down to what the ruling was.

5 MR. DAVIS: At page 758, this is how the Court
6 describes it. The government introduced limited portions of
7 this recording to show what -- did. Beginning in 2011, a
8 mismarked security held by the credit fund by adding gross
9 ledger brokers -- What it said in this case when they're
10 talking about his marking and parroting back made up prices the
11 language, is equally important to intent in this case as it is
12 here.

13 THE COURT: Are you disputing that that line is quoted
14 from the article?

15 MR. DAVIS: Not at all, your Honor.

16 THE COURT: It's different in at least that way as
17 well because the probative value of the statement is reduced by
18 the fact that it is quoted, at least from the defendant's
19 perspective.

20 MR. DAVIS: I agree that it seems like a jury issue to
21 decide. But one more arrow on like the probative side here.
22 If we go up into the chat, he uses quotes for the bounty
23 amount. He uses quotes. The defendant uses quotes in that.
24 It's showing the difference between what he is saying publicly
25 which is false and exculpatory and what he is saying privately.

O4AAAEIS4

Tonkin - Redirect

1 So to the extent you can read into his quote, he
2 quotes an article and he doesn't say look, this article says
3 here is the capital amounts. I didn't manipulate anything.
4 What he says is he is copies it exactly and says this is
5 accurate. So he adopts it. They want to argue that this is
6 just him quoting and copying and pasting and don't read too
7 much in. They should totally argue that to the jury. But we
8 should be able to argue that is not what happened here. The
9 defendant is making a private confession to the crime and he is
10 not -- meanwhile, he shouldn't be able to get into a public
11 exculpatory statement that's classic hearsay.

12 THE COURT: Well, yeah, but at the time of Lumiere, as
13 I think defendant argues that at that time the rule itself did
14 not say that the completing statement could be put in over a
15 hearsay objection, although that is the understanding. And so
16 now the rule explicitly says that. So saying that it's hearsay
17 doesn't are like change things. Really, the only question is
18 is it necessary to make the statements that are put in not
19 misleading or to put them in necessary context. I think you
20 would agree with me that is a fair statement of what the rule
21 of completeness means in the context?

22 MR. DAVIS: I would, your Honor. But just to be
23 clear, the rule I was offering about hearsay was directed from
24 the quoted case.

25 THE COURT: I agree with you. I think they're trying

O4AAAEIS4

Tonkin - Redirect

1 to say if it's not that, then it's an end run around the
2 hearsay rule. I'm with you a hundred percent. I am saying
3 that very narrow if you weren't putting in those last lines, I
4 think that you're correct that putting in the Tweets would not
5 be a proper completing statement. At that point all you really
6 have is that there's been a reference to a statement but
7 there's been nothing about the statement that is put in in this
8 document. It's really the fact that you are putting in, on
9 your view, his characterization of his conduct as manipulation.
10 And so I think that the argument, the reason why it fits into
11 the rule is because if you have him saying to someone this was
12 manipulation to which you are going to say that shows that he
13 is like admitting the crime, isn't it proper to make that not
14 misleading or to put it in proper context that to that same
15 person he directed them to Tweet saying, I've consulted with
16 lawyers and everything I said was legal.

17 MR. DAVIS: I totally understand. I am not trying to
18 pushback.

19 THE COURT: You should pushback.

20 MR. DAVIS: I just want to make clear, I think that
21 goes to the difference between two exhibits that we've
22 discussed. The first one was, I think it was 109. The other
23 issue that is initially raised, in that signal chat it was a
24 private conversation and the sender says something like, heard
25 it was you behind -- The defendant responds -- Now that is

O4AAAEIS4

Tonkin - Redirect

1 directing a statement saying no, no he is denying here and then
2 he is going, look, I actually agree. Point taken on rule
3 completeness there and we're not offering. Here, that's not
4 what he says. He says I cannot comment on the record beyond
5 the existing statement but I can help clarify on background.
6 That's different.

7 THE COURT: I'm agreeing with you on that. That's
8 what I already said that I think you are right as to like those
9 parts of the statement. It's only the last part that it's like
10 actually the other part. It's the part that doesn't refer to
11 the statement directly but it's all in the same conversation.
12 So I'm with you.

13 For instance, if you were to say let's put in the
14 document without those couple last statements because you
15 wanted show the historical facts about what Mr. Eisenberg was
16 saying to someone he conducted, then I would want to think
17 about this and make sure I get it right but I would probably
18 overrule the objection being made. It's really -- and that's
19 why I wanted to focus you on that very last part of the
20 conversation where he says you want to put in that's
21 manipulation and he is calling it manipulation. He is using
22 that term, which is a legal term of art. And so it's a legal
23 term of art, isn't it a proper completion that in the same
24 conversation he directs someone to a Tweet that is about his
25 legal characterization of what he did?

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Tonkin - Redirect

1 MR. DAVIS: I totally take the Court's point. If I
2 could just briefly respond on this?

3 THE COURT: Yes.

4 MR. DAVIS: I would say it's different in this
5 context. We are now talking about multiple different
6 principles that come up in the case which is a lay witness' use
7 of the word "manipulation". We are in the third category of
8 people who have used the word "manipulation". The defendant's
9 use of the word manipulation, that is separately analyzed.
10 That is not the government calling a witness to testify. That
11 is the defendant's own words and he adopted this.

12 Now again, if they want to say, look, he is just
13 parroting back this thing, I have to say it's fair for them to
14 argue and that goes to the weight of the evidence. But we are
15 allowed to argue the alternative, which is, look, he copied and
16 pasted this sentence. He adopted it. He didn't say, look, it
17 wasn't manipulation. He didn't say -- he said this is what I
18 did. And that's a direct statement from the defendant. That's
19 a chat under his account. And we should be allowed to argue to
20 the jury the probative value of that.

21 So I think it's different on a number of different
22 respects. So if a calls -- the legal term to use the legal
23 term and manipulation and what' we've been trying to police
24 that through a trial. But it's different with the defendant's
25 own words.

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Tonkin - Redirect

1 MS. MORTABANO: Your Honor, if I could Mr. Davis
2 pretty much said it for us. He said he adopts this language
3 and you know, if he had put in context right after that saying,
4 I don't adopt it, then okay it would be proper. He put it in
5 context at the start by saying I can't speak to you other than
6 a statement I've already provided and then he says here is some
7 public background information. All right. So it's literally
8 Mr. Davis is suggesting that the fact that he didn't resay
9 right afterward, I actually don't agree with this in public.
10 Let me refer to you again to my statement is what should decide
11 it. This just does not make my sense -- I have not read
12 Lumiere -- is that there the statement that they were seeking
13 to introduce wasn't actually mentioned on the face of the
14 recording or the exhibit as marked by the government which
15 obviously here it does. So we think that is a distinguishing
16 point.

17 And Mr. Klein may have some additional law on this
18 point that I have not.

19 MR. KLEIN: Your Honor, I found one recent case here
20 in the Southern District. It's United States v. Htut and 2023
21 Westlaw 4399049.

22 THE COURT: OK.

23 MR. DAVIS: If counsel would be so kind as to submit
24 that. I know doesn't --

25 THE COURT: I'm sensitive to the process --

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Tonkin - Redirect

1 MR. DAVIS: This objection was raised at 6:30 a.m. by
2 the defendant. We filed a letter over the weekend. Your
3 Honor, I'm happy to read this case but that's all I would like
4 to review it and see it, but the Court is ready to rule I
5 understand.

6 THE COURT: I'll give you time to read the case. So
7 we will come back after the break and then we can hopefully
8 resolve this issue. Thank you.

9 (luncheon recess)

10 (Continued on next page)

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1 AFTERNOON SESSION

2 1:35 p.m.

3 THE COURT: Are we prepared to proceed or do people
4 need a few minutes?

5 MR. BURNETT: Think we're okay from the government's
6 side.

7 THE COURT: Mr. Greenspan, we ready to go?
8 Mr. Talkin?

9 MR. TALKIN: Yes.

10 THE COURT: One additional question, Mr. Burnett. We
11 had this discussion yesterday about Mr. Eisenberg using the
12 Switchboard platform. Is Agent La Grange, is that who is going
13 to have that testimony?

14 MR. BURNETT: Yes.

15 THE COURT: Pursuant to Rule 106, the defendant moves
16 to admit his own Tweets that were referenced in a chat that the
17 government is admitting into evidence at exhibit 401. The
18 motion to admit those Tweets on the basis of Rule 106 is
19 granted.

20 Rule 106 requires admission of so much of a statement
21 or recording as necessary to explain the admitted portion to
22 place it in context, or to avoid misleading the trier of fact,
23 or to ensure a fair and impartial understanding of the admitted
24 portion. That's *United States v. Lumiere*, 249 F. Supp. 3d 748,
25 757 (S.D.N.Y. 2017). Courts in this circuit have refused to

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1 admit, under Rule 106, statements that offer context only
2 insofar as they represent the defendant's self-serving attempts
3 to shoehorn after-the-fact justifications for his actions into
4 his descriptions of his actions. That's also from *Lumiere*.
5 The chat here contains the defendant's inculpatory statements
6 or statements he adopted, including a statement describing his
7 conduct as manipulation, which is, as the Court has said, a
8 legal term of art. Earlier in the same chat, the defendant
9 refers the person he's chatting with to a statement he made on
10 Twitter, or X. In those Tweets defendant says that he believes
11 all his actions are legal.

12 The Court finds these Tweets must be admitted to
13 ensure a fair and impartial understanding of the admitted
14 portion. They provide context for the manner in which the
15 defendant was using the word "manipulation." Indeed, in
16 arguing the defendant adopted the statement about manipulation,
17 which was a quote from an article, the government emphasized
18 the defendant did nothing to distance himself from that
19 characterization of his actions. But the fact that the
20 defendant had earlier in the same conversation referred the
21 person he's chatting with to the statement, reflecting his
22 belief that his actions were lawful does in fact provide the
23 distance that the government says is lacking.

24 In support of its argument that defendant's Tweets
25 should not be admitted, the government cites *Lumiere* and *United*

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1 *States v. Campos*. Neither case is directly on point. In
2 *Lumiere*, the statements that had been admitted dealt with the
3 facts of what the defendant did. Indeed the Court underlined
4 that word in its ruling. The Court further noted that even if
5 a credulous jury might agree that the statement that was sought
6 to be admitted showed that the defendant was acting in good
7 faith, it neither explained nor has relevance to the bare
8 historical facts the government introduced, which is the way
9 the Court characterized the statements being introduced by the
10 government. Here, the statements the government is admitting
11 relate to the defendant's intent and knowledge. Moreover the
12 statements show the defendant characterizing his conduct using
13 a legal term of art that is at the heart of this case. That
14 too distinguishes this case from *Lumiere*.

15 In *Campos*, the government had introduced six excerpts
16 from 8 hours of 30 recorded conversations. The Second Circuit
17 found that the district court did not abuse its discretion in
18 precluding defendant from introducing more of the recordings,
19 emphasizing the fact that the district court rejected
20 defendant's assertion that all the recordings were one long
21 continuing conversation. The district court had also explained
22 that the government had introduced the recordings for a limited
23 purpose, the falsity of an assertion. Here, the Tweets were
24 referenced in the same statement that the government seeks to
25 introduce, and the government is introducing statements going

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1 to the defendant's knowledge and intent, exactly the same
2 things that the excluded statements relate to.

3 That's the ruling on exhibit 401.

4 Any further issues to address before the jury comes
5 in?

6 MR. DAVIS: No, your Honor. Thank you.

7 MR. TALKIN: Just that Mr. Eisenberg needs to run to
8 the restroom real quick.

9 THE COURT: Okay.

10 MR. TALKIN: Thank you, your Honor.

11 THE COURT: While we're waiting, so we have one last
12 witness, the government will rest, we'll let them go for the
13 day, and then we'll have motions.

14 MR. KLEIN: Yes, your Honor. Is there going to be a
15 little break between the government resting and us coming back
16 to the Rule 29 motion? 15, 20, 30 minutes just to square away
17 our notes?

18 MR. GREENSPAN: 45.

19 MR. KLEIN: 45, hour, two hours.

20 MS. MARTABANO: Monday.

21 MR. KLEIN: We can do it today, we just need a little
22 time to absorb the testimony.

23 THE COURT: We'll be done at 2:30 and we'll start with
24 arguments at 3:00.

25 Mr. Hernandez, let's bring the jury in.

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La Grange- Direct

1 (Jury present)

2 THE COURT: Welcome back.

3 Mr. Burnett, you may call your next witness.

4 MR. BURNETT: The government calls Special Agent
5 La Grange.

6 TAYLOR LA GRANGE,

7 called as a witness by the Government,

8 having been duly sworn, testified as follows:

9 THE DEPUTY CLERK: Can you please provide the Court
10 your first and last name, and spell your first and last name.

11 THE WITNESS: Yes, Taylor T-A-Y-L-O-R, La Grange,
12 L-A G-R-A-N-G-E.

13 DIRECT EXAMINATION

14 BY MR. BURNETT:

15 Q. Good afternoon, Special Agent La Grange.

16 A. Good afternoon.

17 Q. Where do you work?

18 A. FBI New York.

19 Q. How long have you worked there for?

20 A. Approximately three and a half years.

21 Q. Is there a particular group that you're a part of now?

22 A. I currently work on the securities fraud squad.

23 Q. About how long have you been on that squad for?

24 A. About five months.

25 Q. What did you do before that?

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La Grange- Direct

1 A. I worked counterintelligence matters.

2 Q. In preparing to testify today, have you reviewed certain
3 documents and communications from this case?

4 A. Yes.

5 Q. And how did you get those documents?

6 A. I received the documents from Special Agent Brandon Racz
7 and yourself.

8 Q. Other than reviewing those documents you received from me
9 and Special Agent Racz, have you had any role in investigating
10 this case?

11 A. No.

12 Q. Now, I'd like to show you what's been marked as government
13 demonstrative 1830. Will this help in your testimony today?

14 A. Yes.

15 MR. BURNETT: The government seeks permission to use
16 demonstrative 1830.

17 MR. TALKIN: No objection, your Honor.

18 THE COURT: You may use demonstrative 1830.

19 MR. BURNETT: Before we publish this for the jury, one
20 housekeeping matter. The government offers 608, which we
21 showed yesterday, but forgot to admit at the time.

22 MR. TALKIN: Also no objection.

23 THE COURT: Exhibit 608 will be admitted.

24 (Government's Exhibit 608 received in evidence)

25 MR. BURNETT: Mr. Oshinsky, if you could please

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La Grange- Direct

1 publish this for the jury to take a look at.

2 Q. What are we looking at here?

3 A. This is a timeline of the documents that I reviewed.

4 Q. What year did everything happen in?

5 A. In 2022.

6 Q. Let's walk our way through this document. What's the first
7 date?

8 A. July 6, 2022.

9 Q. What's the entry there?

10 A. Eisenberg lawsuit.

11 MR. BURNETT: At this point, I'd like to read a
12 stipulation between the parties, which is Government Exhibit
13 1704, which the government offers at this time.

14 THE COURT: Any objections?

15 MR. TALKIN: No, it's a stipulation. No objection.

16 THE COURT: Okay.

17 (Government's Exhibit 1704 received in evidence)

18 MR. BURNETT: If we could show that to the jury,
19 please, and blow up the first paragraph 1, the numbered
20 paragraph 1.

21 The stipulation is on or about July 6, 2022, Avraham
22 Eisenberg, through his lawyers, filed a lawsuit in the United
23 States federal court, in Avraham Eisenberg v. Numeris Ltd.,
24 Sasha Ivanov, and DOES 1-10, with the case captioned in the
25 District of Puerto Rico. Avraham Eisenberg sued the defendants

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La Grange- Direct

1 for, among other things, price manipulation, in violation of
2 the Commodities Exchange Act, Title 7, United States Code,
3 Section 9(1), civil conspiracy, fraudulent misrepresentation,
4 fraudulent inducement, dolo, negligent misrepresentation,
5 conversion, unjust enrichment, promissory estoppel, equitable
6 estoppel, indebitatus assumpsit.

7 Take that down and go back to our timeline.

8 Q. I'd like to show you a document that comes a little later
9 on this timeline, but it's a document that's Government Exhibit
10 609. Do you see that from October 8th?

11 A. Yes.

12 MR. BURNETT: At this time, the government offers
13 exhibit 609 and its attachment, 609A.

14 THE COURT: Any objection?

15 MR. TALKIN: No further objection, your Honor.

16 THE COURT: Exhibit 609 and 609A will be admitted.

17 (Government's Exhibits 609, 609A received in evidence)

18 MR. BURNETT: Before we show this exhibit to the jury,
19 let's take a look at another stipulation, which is 1702,
20 please. If you could scroll to the second page.

21 If you look at No. 5, this says that Government
22 Exhibit 600 through 613 – so I'm including exhibit 609 – is a
23 true and correct copy of a record produced by Google for the
24 Google account 613IKE@gmail.com.

25 If we could very quickly take a look at Government

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La Grange- Direct

1 Exhibit 613, please.

2 If we could publish this for the jury. It's already
3 in evidence.

4 Q. Special Agent La Grange, do you see this is Google
5 subscriber information?

6 A. Yes.

7 Q. What email is it for?

8 A. 613IKE@gmail.com.

9 Q. What's the name associated with this account?

10 A. Avraham Eisenberg.

11 Q. Let's go back to 609, which is from this account, and I'd
12 like to take a look at this document with the jury, please.

13 Could you read the first sentence there.

14 A. Sasha Ivanov is committing a \$500 million fraud in market
15 manipulation.

16 Q. Now, that name, Sasha Ivanov, do you recognize that from
17 anywhere?

18 A. Yes.

19 Q. Where do you recognize it from?

20 A. From the previous document we reviewed.

21 Q. From the stipulation about the lawsuit?

22 A. Yes.

23 MR. BURNETT: If you could zoom in on the paragraph
24 that says high level description of the fraud.

25 Q. Could you read that paragraph please.

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La Grange- Direct

1 A. High level description of the fraud. Sasha and other
2 parties created a lending platform on the Waves chain called
3 Vires Finance, and an Algo Stablecoin, called USDN, that could
4 be created by locking up the Waves token. For example, if
5 Waves was \$50, you could spend one Waves to the contract and
6 receive 50 USDN. They hardcoded the value of the USDN on the
7 platform to \$1 and allowed borrows of USDC and USDT against it.
8 They spent tens of millions of dollars buying up Waves so that
9 the price went up from single digits to a high of \$60. They
10 then turned those Waves into USDN at this inflated price and
11 borrowed about 550M of USDC and USDT against their USDN that
12 they had enticed to lend on buyers. They then stopped paying
13 interest, reducing the max APY from 80 percent to 0 percent.
14 Q. If we could take that down, do you see there is a section
15 called "Specific Fraudulent Actions"?

16 A. Yes.

17 Q. Can you read the first bullet point on there.

18 A. Market manipulation of the Waves coin.

19 Q. Let's go back to Government Exhibit 1830, or government
20 demonstrative 1830. I'd like to move up to September 1st. Do
21 you see there is an entry there that's labeled "Tweet"?

22 A. Yes.

23 Q. What does that mean? Where does that document come from?

24 A. Tweet comes from Twitter.

25 Q. I'm going to show you Government Exhibits 800 and 800A.

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La Grange- Direct

1 MR. BURNETT: If we can have them go side by side.

2 Q. Do you recognize these?

3 A. Yes.

4 Q. How do you recognize them?

5 A. I recognize the one on the left, the Tweet, because I
6 reviewed the Twitter account associated with Avraham Eisenberg.

7 Q. Are these true and accurate copies of a Tweet and the
8 article linked in that Tweet?

9 A. Yes.

10 MR. BURNETT: The government offers 800, 800A.

11 MR. TALKIN: No objection.

12 THE COURT: These documents will be admitted.

13 (Government's Exhibits 800, 800A received in evidence)

14 MR. BURNETT: Let's start with Government Exhibit 800
15 for the jury, please.

16 Q. You said this is a Tweet; correct?

17 A. Yes.

18 Q. What's the name associated with the Twitter account?

19 A. Avraham Eisenberg.

20 Q. What's the date?

21 A. September 1st, 2022.

22 Q. Can you read what the message says, not the picture, just
23 the message?

24 A. Guess what happened next.

25 MR. BURNETT: And scroll to the next page, please.

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La Grange- Direct

1 Q. What does that message say?

2 A. If you guessed, he dumped \$725 million USD to buy ZAR and
3 to low liquidity right before midnight on Christmas. You win.

4 Q. Do you see there's a link here that says justice.gov?

5 A. Yes.

6 Q. I'm going to have you take a look at Government Exhibit
7 800A. What relationship is there between that link and this
8 article that we just pulled up?

9 A. That link brings you to this press release.

10 Q. And what's the title of the press release?

11 A. Cofounder and chief investment officer of London based
12 hedge fund charged with FX market manipulation and fraud.

13 Q. What's the date?

14 A. September 1st, 2022.

15 Q. Could you read the first two paragraphs of this press
16 release here.

17 A. Damian Williams, the United States Attorney for the
18 Southern District of New York, and Michael J. Driscoll, the
19 Assistant Director0In-Charge of the New York Field Office of
20 the Federal Bureau of Investigation announced the unsealing of
21 an indictment charging Neil Phillips, the cofounder and chief
22 investment officer of a hedge fund based in the United Kingdom,
23 with conspiracy to commit commodities fraud, conspiracy to
24 commit wire fraud, commodities fraud, and wire fraud in
25 connection with a scheme to artificially manipulate the United

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La Grange- Direct

1 States dollar, South African rand (ZAR) exchange rate to
2 fraudulently trigger a \$20 million payment under a barrier
3 options contract. Phillips was arrested in Spain earlier this
4 week at the request of the United States.

5 U.S. Attorney Damian Williams said, as alleged, Neil
6 Phillips, the cofounder and chief investment officer of a
7 prominent UK hedge fund, manipulated the FX market in order to
8 unlawfully obtain millions of dollars in payments for his hedge
9 fund under an options contract. Market manipulation is
10 pernicious in all of its forms and today's charges are a
11 reminder that the Southern District of New York will
12 steadfastly investigate and prosecute such activity whether it
13 occurs in the equity market, the FX market, or elsewhere in the
14 financial system.

15 MR. BURNETT: Let's take that down and go back to
16 demonstrative 1830, please.

17 Q. When's the next entry from?

18 A. September 21st, 2022.

19 Q. That one's labeled Discord message. What does that mean?

20 A. It's a message from the Discord messaging application.

21 MR. BURNETT: Let's go ahead to that message, which is
22 Government Exhibit 502, and just have the witness take a look
23 at this point.

24 Q. Where does this come from?

25 A. This comes from the Discord messaging app.

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La Grange- Direct

1 MR. BURNETT: The government offers 502A.

2 MR. TALKIN: No objection.

3 THE COURT: 502A will be admitted.

4 (Government's Exhibit 502A received in evidence)

5 MR. BURNETT: If we could display that for the jury,
6 please.

7 Q. What is Discord?

8 A. Discord is a messaging application.

9 Q. Now, let's just orient ourselves a bit here. Do you see
10 column D, it has timestamp written there?

11 A. Yes.

12 Q. What day are these messages from?

13 A. September 21st, 2022.

14 Q. Do you see there's a username alongside a lot of the
15 messages?

16 A. Yes.

17 Q. What's that username?

18 A. Avraham Eisenberg #5451.

19 Q. I'm going to have you read through these messages. I'd
20 like to start by having you read from rows 2 through row 23.

21 A. I'm looking at low cap coins listed on lending markets.
22 The idea is you buy a ton, massively increase the price, and
23 borrow on lending to lever. The most important question is,
24 how much liquidity shows up to dump if I randomly ten times the
25 price. Example, BAL, MNGO. Look at liquidity and volume for

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La Grange- Direct

1 those. You don't need to sell. You can just let the loan
2 stand. If you spend 5M and can borrow 10M. Well, I'm prepared
3 to spend good money. Question is risk. Look at those two
4 coins. For BAL, liquidity is pretty high on chain. 20M only
5 moves it to a \$20 range of 4X. 15M moves it to \$14 range for
6 almost 3X. If I do that and wait until chain link updates how
7 much would have dumped. MNGO has much lower liquidity, but
8 lower limits, so I need to pump it a lot more to be profitable.
9 MNGO is like 400K volume. I'm happy to pump 2M in, but it's
10 risky if you move price up 10X.

11 Q. Who was the author of all those messages?

12 A. Avraham Eisenberg.

13 Q. Let's keep going ahead to rows 38 to 49.

14 A. But look at MNGO, literally no liquidity. Can't even buy
15 100D worth. MNGO is good if I can pump it on low liquidity.

16 If I can move it 4X, I can probably make money. 10X better.

17 At 4X, their standing asks, not many though. MNGO has a
18 lending market. I need to math it out. If you help, I'll get
19 you a cut once I succeed. Don't want you touching the markets
20 though, no.

21 Q. And who wrote all those messages?

22 A. Avraham Eisenberg.

23 Q. Finally, let's take a look at rows 54 to 65.

24 A. First question is viability. Eyeballing MNGO books, what
25 happens if I spend 250K. Does it move to 20C and stay there

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La Grange- Direct

1 for a while. We can pull borrows. But I don't think there's
2 many levered positions. The thing is, after 10 to 20 percent,
3 there's just no orders. So I have little idea what happens
4 there. Either it's ghost town and I can 1,000X it or the
5 sellers show up. Anyway, heading to lunch now. The MNGO chart
6 looks primed for a pump too. I bet some MMs will join the
7 party. Need an FTX account.

8 MR. BURNETT: Let's go back to demonstrative 1830,
9 please. Let's move from September 21st to the Tweet that's
10 listed on the 26th. I'm going to show you 801 and 801A just
11 for the witness for the moment, please.

12 Q. Do you recognize these?

13 A. Yes.

14 Q. Where are they from?

15 A. The one on the left is from Twitter.

16 Q. How about the one on the right?

17 A. The one on the right is a press release.

18 MR. BURNETT: The government offers 801, 801A.

19 MR. TALKIN: No objection.

20 THE COURT: These documents will be admitted.

21 (Government's Exhibits 801, 801A received in evidence)

22 MR. BURNETT: Let's start by taking a look at
23 Government Exhibit 801.

24 Q. What's the name on this Twitter account?

25 A. Avraham Eisenberg.

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La Grange- Direct

1 Q. And do you see there is another link here at the very top
2 to justice.gov?

3 A. Yes.

4 Q. When is this Tweet from?

5 A. This Tweet is from September 26th, 2022.

6 Q. Have you clicked that link?

7 A. Yes.

8 MR. BURNETT: Let's take a look at Government Exhibit
9 801A.

10 Q. What's the relationship between this article and that link?

11 A. This article is what pulls up when you click on the link.

12 Q. What's the title here?

13 A. Three men charged with international market manipulation
14 scheme.

15 Q. Now let's take a look at the first paragraph. What does
16 that say?

17 A. Newark, New Jersey, an indictment unsealed today charges
18 three men with orchestrating a large-scale market manipulation
19 scheme related to two publicly traded companies u.S. Attorney
20 Phillip R. Sellinger announced.

21 Q. Let's read the last paragraph on this first page here.

22 A. From 2014 through September 2022, Patten, Coker Sr., and
23 Coker Jr. conspired to enrich themselves through a scheme to
24 manipulate securities prices via a pattern of coordinated
25 trading, which injected inaccurate information into the

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La Grange- Direct

1 marketplace, creating false impressions of supply and demand
2 for these securities.

3 MR. BURNETT: Let's go back to 1830, please.

4 Q. We just looked at Mr. Eisenberg's Tweet from the 26th. We
5 move ahead to the 28th, see there's another Tweet there?

6 A. Yes.

7 MR. BURNETT: The government offers 802 and 802A.

8 MR. TALKIN: No objection.

9 THE COURT: They'll be admitted.

10 (Government's Exhibits 802, 802A received in evidence)

11 MR. BURNETT: Let's start by publishing Government
12 Exhibit 802 for everyone, please.

13 Q. What's the name on this Twitter account?

14 A. Avraham Eisenberg.

15 Q. What's the date?

16 A. September 28th, 2022.

17 Q. And what's the text of the Tweet?

18 A. SEC going after our market maker for manipulating trading
19 volume and price of crypto securities.

20 Q. See there's another link there?

21 A. Yes.

22 MR. BURNETT: 802A please.

23 Q. What's relationship between that article and that link?

24 A. This is the article that pulls up when you click on the
25 link.

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1 Q. Could you read the title here.

2 A. SEC charges the hydrogen technology corporation and its
3 former CEO for market manipulation of crypto asset securities.

4 Q. I'd like you to take a look at the second paragraph. Do
5 you see at the end, the fourth line down, there's a sentence
6 that begins "the complaint further alleges"?

7 A. Yes.

8 Q. Just read that, please.

9 A. The complaint further alleges that, after distributing the
10 token in those ways, Kane and Hydrogen hired Moonwalkers, a
11 South-Africa based firm, in October 2018, to create the false
12 appearance of robust market activity for Hydro through its use
13 of its customized trading software, or "bot," and then selling
14 Hydro into that artificially inflated market for profit on
15 Hydrogen's behalf. Hydrogen's allegedly reaped profits of more
16 than \$2 million as a result of the defendants' conduct.

17 Q. Let's move back to 1830. We've made it out of September
18 now, so let's start in on October, with October 6th. Do you
19 see there's an entry there that's titled search/web history
20 (phone)?

21 A. Yes.

22 Q. What does that mean?

23 A. That's a search and web history for Mr. Eisenberg's phone.

24 MR. BURNETT: Now, I'd like to read a stipulation now.
25 First I'll offer Government Exhibit 1702A.

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1 MR. TALKIN: No objection.

2 THE COURT: Admitted.

3 (Government's Exhibit 1702A received in evidence)

4 MR. BURNETT: This is a stipulation that Government
5 Exhibits 117A through 122A, 123 and 124 are true and correct
6 copies of the data extracted cellphone 1B2, which, according to
7 stipulation 1702, is a cellphone seized from Mr. Eisenberg.

8 At this point, the government offers 117A through
9 122A, 123 and 124.

10 MR. TALKIN: No objection.

11 THE COURT: Those exhibits will be admitted.

12 (Government's Exhibits 117A through 122A, 123, and 124
13 received in evidence)

14 Q. Let's start by taking a look at -- this says Government
15 Exhibit 117, but we're actually going to take a look at 117A,
16 which was just offered. We'll see a few of these, so I want
17 you to help orient everyone. Where does the data in this
18 document come from?

19 A. The data in the document comes from Mr. Eisenberg's phone.

20 Q. And what type of data is displayed in this document?

21 A. This is search and web history.

22 Q. Have you reviewed the search and web history to make sure
23 the material actually comes from the cellphone?

24 A. Yes.

25 Q. Now, do you see column A, what type of information is in

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La Grange- Direct

1 column A?

2 A. The date and time.

3 Q. Now, column B, what type of information's there?

4 A. The title of the website visited.

5 Q. And how about column C, what type of information's there?

6 A. This is either the web history address or the search term
7 entered.

8 Q. And just on that point, do you see there are some entries
9 where there's a blank for the title, but there's some text in
10 column C?

11 A. Yes.

12 Q. What does that indicate?

13 A. That indicates that he searched the text in column C, but
14 didn't go into that website.

15 Q. So let's take a look at just a few examples of entries from
16 this website. Starting with the web history, what's the title
17 of the website visited in row 2?

18 A. Overview Mango Markets.

19 Q. How about row 3?

20 A. Health overview Mango Markets.

21 Q. And the URL, what's the beginning of the URL for that
22 website?

23 A. Docs.mango.markets.

24 Q. How about row 4?

25 A. Beginner tips Mango Markets.

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La Grange- Direct

1 Q. Later that day in row 7, what's the website visited there?

2 A. Home Jupiter Aggregator.

3 Q. How about row 9?

4 A. Switch borrowed board.

5 Q. And row 11?

6 A. Switchboard.

7 Q. After these Mango searches -- Mango website visits, do you
8 see there are two searches at the bottom in rows 17 and 18?

9 A. Yes.

10 Q. What were the texts of those searches?

11 A. Oracle manipulation BSC Venus, and then oracle manipulation
12 XPS Venus.

13 MR. BURNETT: Let's go back to government --
14 demonstrative 1830, please.

15 Q. So we just covered October 6th. Let's take October 7th and
16 October 8th back to back. Those are exhibits 118A and 119A;
17 correct?

18 A. Yes.

19 Q. Start with October 7th, which is 118A?

20 A. Yes.

21 Q. Is this another one of these search and web history
22 documents?

23 A. Yes.

24 Q. Just to go through a couple of the websites visited, what's
25 row 2 say?

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La Grange- Direct

1 A. Technical intro to Mango Markets.

2 Q. How about row 5?

3 A. Audit Mango Markets.

4 Q. Row 12?

5 A. Mango DAO.

6 Q. And row 17?

7 A. Switchboard.

8 Q. Now Government Exhibit 119A was for the next day, October
9 8th; correct?

10 A. Yes.

11 MR. BURNETT: Let's go ahead to Government Exhibit
12 119. If we can scroll over.

13 Q. Same search and web history type page again?

14 A. Yes.

15 Q. What's the first search that appears in row 2?

16 A. Statute of limitations conversion.

17 Q. And what's the title of the website that's visited after?

18 A. Statute of limitations conversion Google search.

19 Q. Then what's the next search in row 4?

20 A. Statute of limitations market manipulation.

21 Q. And the next one, row 5, it's a long URL, but could you
22 read the phrase after the equal sign?

23 A. Statute of limitations market manipulation.

24 Q. And if you look down to row 7, do you see there's another
25 title of a website visited there?

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1 A. Market manipulation under federal U.S. law, U.K. and U.S.
2 explained.

3 Q. Now, row 9, do you see there's a search there?

4 A. Yes.

5 Q. What was searched in row 9?

6 A. Elements of fraud.

7 Q. Now how about row 10, what's the search result?

8 A. Elements of fraud Google search.

9 Q. Row 11?

10 A. Fraud Wikipedia.

11 Q. Row 13?

12 A. Mango Markets.

13 Q. And how about row 14?

14 A. Securities trader sentenced to 18 months in prison for
15 market manipulation scheme that netted more than \$17 million in
16 illicit profits.

17 MR. BURNETT: Let's go back to Government Exhibit
18 1830, please, demonstrative.

19 Q. So we just looked at October 7 and 8. October 11 is the
20 next entry on your chart; correct?

21 A. Yes.

22 Q. Here there are a few summary charts listed; correct?

23 A. Yes.

24 Q. Just to help keep everyone oriented, let's take a quick
25 look at Government Exhibits 1352 and 1353 side by side, which

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La Grange- Direct

1 are two of those summary charts. What was the date labeled on
2 these summary charts?

3 A. October 11th, 2022.

4 MR. BURNETT: If we could take a look back at 1830.

5 Q. There a web history entry for Government Exhibit 318. Do
6 you see that?

7 A. Yes.

8 MR. BURNETT: Now, according to stipulation 1702A,
9 Government Exhibit 318 is a true and correct copy of data
10 extracted from the computer, which, according to 1702, was
11 seized from Mr. Eisenberg. So I'll offer 318.

12 MR. TALKIN: No objection.

13 THE COURT: Admitted.

14 (Government's Exhibit 318 received in evidence)

15 MR. BURNETT: If we could display 318 for the jury,
16 please.

17 Q. Where does this come from?

18 A. This comes from Mr. Eisenberg's computer.

19 Q. What's the title here?

20 A. Mango Markets.

21 Q. And the URL?

22 A. Trade.mango.markets/borrow.

23 Q. Do you see there is a "this visit" timestamp?

24 A. Yes.

25 Q. What does that say?

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La Grange- Direct

1 A. October 11, 2022 at 10:01 p.m. UTC.

2 Q. What is that converted back to Eastern Time?

3 A. 6:00 p.m., approximately.

4 MR. BURNETT: So we can take that down and let's take
5 a quick look at one more exhibit from this date, if you look
6 at -- actually, sorry. Let's take a look at Government Exhibit
7 120A.

8 Q. Is this a search history from October 11th?

9 A. Yes.

10 Q. And just looking at a few of these, do you see row 4? What
11 does that say?

12 A. Switchboard.

13 Q. 6?

14 A. Mango Markets.

15 Q. Row 9?

16 A. AscendEX cryptocurrency trading platform, Bitcoin, and
17 Crypto Exchange.

18 Q. How about row 15?

19 A. Home Circle.

20 Q. And row 20?

21 A. Home Jupiter Aggregator.

22 Q. Let's look back to 1830 and move ahead to the day after
23 this happened. So the charts and the web history we were just
24 looking at was from October 11th; correct?

25 A. Yes.

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La Grange- Direct

1 Q. Let's move to the next day, October 12th. Do you see
2 there's a Gmail entry there?

3 A. Yes.

4 Q. And that was Government Exhibit 604?

5 A. Yes.

6 Q. And as you read in the stipulation earlier, that was the
7 613IKE@gmail.com?

8 A. Yes.

9 Q. Who was the named owner of that account?

10 A. Avraham Eisenberg.

11 MR. BURNETT: Let's take a look at Government Exhibit
12 604.

13 Sorry the government offers 604.

14 MR. TALKIN: No objection.

15 THE COURT: It's in.

16 (Government's Exhibit 604 received in evidence)

17 MR. BURNETT: Let's have it to the jury, please.

18 Q. If you look at the top of the email here, who is it from?

19 A. United Airlines Incorporated.

20 Q. What is the subject?

21 A. Your United reservation for Tel Aviv is processing.

22 Q. What's the date and time?

23 A. October 12th, 2022, at 2:30 p.m. UTC.

24 Q. What is that converted back to Eastern Time?

25 A. It would be 10:30 a.m., approximately.

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La Grange- Direct

1 Q. You see it says, thank you for choosing United, at the
2 bottom it has a purchase summary?

3 A. Yes.

4 Q. So let's take a look at the next page. Now, under trip
5 summary, what's the first leg of the trip?

6 A. San Juan to New York, Newark, New Jersey.

7 Q. How about the next leg of the trip?

8 A. New York, Newark, New Jersey, to Tel Aviv, Israel.

9 Q. What's the scheduled depart date?

10 A. October 12th, 2022.

11 Q. Now, did this particular reservation have a return flight,
12 too?

13 A. Yes.

14 Q. What was the date of that return flight?

15 A. October 24th, 2022.

16 MR. BURNETT: All right. So let's go back to 1830,
17 please.

18 Q. And do you see there's more search and web history from the
19 phone also from October 12th?

20 A. Yes.

21 MR. BURNETT: Let's take a look at Government Exhibit
22 121A, please.

23 Q. What's the date of the information on this page?

24 A. October 12th, 2022.

25 Q. So the same day as that flight?

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La Grange- Direct

1 A. Yes.

2 Q. Now, the row No. 2, what's the search there?

3 A. Newark international flight layover security.

4 Q. How about row 5?

5 A. Requirements for international flight.

6 Q. No. 9?

7 A. Israel flight requirements.

8 Q. And how about down to row 16?

9 A. Newark international flight layover security.

10 Q. Now see there's a Google search web result in row 19?

11 A. Yes.

12 Q. What's that?

13 A. Market manipulation criminal Google search.

14 Q. How about the next entry?

15 A. Individual indicted for market manipulation conspiracy.

16 Q. The one after that?

17 A. Market manipulation criminal.

18 Q. How about the entry down on row 23?

19 A. Market manipulation criminal elements.

20 Q. And 24?

21 A. Market manipulation criminal elements.

22 Q. 25?

23 A. Criminal and regulatory enforcement of market manipulation
24 spikes publications and presentations Arnold and Porter.

25 MR. BURNETT: All right. Now let's look at government

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La Grange- Direct

1 demonstrative 1830, please. Now we'll offer Exhibit 310, but I
2 don't think we have to take a look at it right now.

3 MR. TALKIN: No objection.

4 THE COURT: It's admitted.

5 (Government's Exhibit 310 received in evidence)

6 Q. We'll move ahead to October 16th, you see there's another
7 search web history here?

8 A. Yes.

9 MR. BURNETT: Let's look at 124, please, from the
10 16th.

11 Q. Now, I know this is a different format, but what type of
12 data is on this page?

13 A. It's web and search history from Mr. Eisenberg's phone.

14 Q. So the same type of data we've been looking on the
15 spreadsheets?

16 A. Yes.

17 Q. What is the searched item -- you see there's the searched
18 items on the left and there's a description on the right?

19 A. Yes.

20 Q. Starting with No. 1, what's the searched item?

21 A. List of Israel extraditions.

22 Q. If we can scroll further down to row 4.

23 A. Extradition from Israel Office of Justice programs.

24 Q. And how about row 8?

25 A. Extradition the Office of the State Attorney.

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La Grange- Direct

1 MR. BURNETT: All right. Let's go back to 1830 now.

2 Q. We'll take a look at one last email, which is Government
3 Exhibit 612, which was another one of those exhibits from the
4 series in the 613IKE@Gmail belonging to an Avraham Eisenberg?

5 A. Yes.

6 MR. BURNETT: The government offers 612.

7 MR. TALKIN: No objection.

8 THE COURT: It will be admitted.

9 (Government's Exhibit 612 received in evidence)

10 MR. BURNETT: Let's show Government Exhibit 612 to the
11 witness and the jury, please.

12 Q. What source is this email from?

13 A. United Airlines.

14 Q. And you see the subject?

15 A. Your reservation has been canceled.

16 Q. Now, what reservation was being canceled in this email?

17 A. Mr. Eisenberg's return flight.

18 MR. BURNETT: We can take that down and go back to
19 1830, please.

20 Q. Now, there are two entries in November, one from the 9th
21 and one from the 18th; correct?

22 A. Yes.

23 Q. Now those are both labeled "chat phone," correct?

24 A. Correct.

25 Q. What does that mean?

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La Grange- Direct

1 A. They are text messages from the phone, from Mr. Eisenberg's
2 phone.

3 Q. Was that a phone seized from Mr. Eisenberg according to
4 Government Exhibit 1702, the stipulation?

5 A. Yes.

6 MR. BURNETT: So the government offers exhibits 112
7 and 110.

8 MR. TALKIN: No objection, your Honor.

9 THE COURT: They'll be admitted.

10 (Government's Exhibits 112, 110 received in evidence)

11 MR. BURNETT: Let's take a look at Government Exhibit
12 112, please.

13 Q. Just to help orient everyone, you see it says, "Signal
14 messages Android" up top?

15 A. Yes.

16 Q. What does that mean?

17 A. It means this is from the Signal messaging application.

18 Q. And the first message in blue. What are the last four
19 digits of that phone number?

20 A. 8642.

21 Q. And what's the message written out here?

22 A. Hey, it's Avraham.

23 MR. BURNETT: Mr. Oshinsky, if you wouldn't mind
24 zooming in kind of on the text part of this side of the slide
25 all the way down so we can make it a bit bigger. Thank you.

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La Grange- Direct

1 Q. Why don't you read the messages in blue and I'll read the
2 messages in gray. Okay?

3 A. Yes.

4 Hey, it's Avraham.

5 Q. Hey. Well, FTX has taken you out of the news, lol. This
6 shit is crazy.

7 A. Yeah, kept wanting to dump 50M into FTT or something, but
8 didn't end up trading. Too unclear.

9 MR. BURNETT: Let's go to the next page and blow up
10 the text again.

11 Q. Where you live, dog?

12 A. Puerto Rico.

13 Q. All right.

14 A. Hanging out internationally until stuff blows over, though.

15 MR. BURNETT: All right. Let's take that down and go
16 to Government Exhibit 110.

17 Q. Is this another Signal message from the cellphone seized
18 from Mr. Eisenberg?

19 A. Yes.

20 MR. BURNETT: Go to the next page, please.

21 Q. Now, just to orient everyone, do you see there are a few
22 blue messages?

23 A. Yes.

24 Q. What's the last four digits of the phone number on those
25 blue messages?

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La Grange- Direct

1 A. 8642.

2 Q. How does that compare to the blue messages in the last set
3 of chats we were just looking at?

4 A. It's the same sender.

5 MR. BURNETT: Let's do the same thing, why don't we
6 blow up the just the text on the first half of these messages
7 for now.

8 Q. Almost at your apartment, be available if you can. Mission
9 accomplished. You had two easy, one heavy probably tungsten,
10 emoji, I dropped it inside. He asked when you're ing back
11 because your lease is up at the end of the month. I said I
12 don't know.

13 A. Lease is up middle of January, I think. What do you mean?

14 Q. You received two packages. It was laying in the hallway.
15 I dropped the packages inside your apartment.

16 A. Ah, thanks.

17 Q. One package was open?

18 A. Ordered a bunch of food and then had to leave quickly.

19 MR. BURNETT: All right. Let's go back to 1830,
20 please.

21 Q. Let's take a look now, there are a few more entries in
22 December from the 6th, the 13th, and the 20th?

23 A. Yes.

24 Q. So let's start with the 6th. That's another search and web
25 history from the phone; correct?

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La Grange- Direct

1 A. Yes.

2 Q. Is that Mr. Eisenberg's phone?

3 A. Yes.

4 MR. BURNETT: All right. Let's take a look at
5 Government Exhibit 122.

6 Q. What kind of document are we looking at here?

7 A. This is searched items from Mr. Eisenberg's phone.

8 Q. And each of these has the same description; correct?

9 A. Yes.

10 Q. What does it say?

11 A. FBI surveillance.

12 Q. What's the date on that?

13 A. December 6th, 2022.

14 Q. Now, I believe the -- let's go ahead to -- sorry, back to
15 1830, please. The next search and web history exhibit was from
16 about a week later on the 13th; correct?

17 A. Yes.

18 MR. BURNETT: Let's take a look at Government Exhibit
19 123.

20 Q. Is this another one of these searched item logs?

21 A. Yes.

22 Q. What's the searched item for all of these entries?

23 A. Otison prison. Or Otisville prison.

24 Q. I apologize. What does search 1 say?

25 A. Otison prison.

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La Grange- Direct

1 Q. How about search 3?

2 A. Otisville prison.

3 Q. And 4?

4 A. Otisville prison.

5 Q. As a law enforcement officer, are you familiar with what
6 Otisville prison is?

7 A. Yes.

8 Q. What is it?

9 A. It's a federal correctional facility in New York that
10 primarily houses white collar criminals.

11 MR. BURNETT: Let's take this down and go back to
12 1830.

13 Q. The last entry here is from December 20th, correct?

14 A. Yes.

15 Q. And it's another email in that 600 series; is that right?

16 A. Yes.

17 Q. Does that mean it's from the 613IKE@Gmail account
18 subscribed to Avraham Eisenberg?

19 A. Yes.

20 MR. BURNETT: Let's take a look at 610.

21 Q. Who's this email from?

22 A. Iberia.

23 Q. What's the subject?

24 A. Confirmation of booking. P7PZG to San Juan, de Puerto
25 Rico.

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La Grange - Cross

1 MR. BURNETT: If we scroll down to the booking
2 details, a little further down.

3 Q. What's the departure and arrival information here?

4 A. Tel Aviv, Israel, to Madrid, Spain, and to San Juan to
5 Puerto Rico.

6 Q. What day was it scheduled to arrive at San Juan, Puerto
7 Rico?

8 A. December 26th, 2022.

9 MR. BURNETT: Finally, at this point, the government
10 will offer another stipulation between the parties, which is
11 Government Exhibit 1703.

12 THE COURT: The stipulation will be accepted.

13 (Government's Exhibit 1703 received in evidence)

14 MR. BURNETT: That stipulation reads: Mr. Eisenberg
15 was arrested on criminal charges upon his arrival at San Juan
16 International Airport in Puerto Rico on December 26th, 2022.
17 Law enforcement had previously obtained a court authorized
18 sealed arrest warrant. Consistent with the court order, the
19 arrest warrant was not made public until after he was arrested.

20 No further questions, your Honor.

21 THE COURT: Cross examination?

22 MR. TALKIN: Briefly, your Honor.

23 CROSS-EXAMINATION

24 BY MR. TALKIN:

25 Q. Good afternoon.

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La Grange - Cross

1 A. Good afternoon.

2 MR. TALKIN: Can we pull up exhibit 604, please. If
3 we could highlight the top there, the to-and-from section,
4 please.

5 Q. Looking at the top of 604, you see the email with United
6 Airlines that you discussed on direct examination, dated
7 October 12th, 2022. You see that?

8 A. Yes.

9 Q. And you see the "to" and the "from" there?

10 A. Yes.

11 Q. And the "from" is from United Airlines?

12 A. Yes.

13 Q. And then it says "masked." Do you see that?

14 A. Yes.

15 Q. And then going all the way to the right, that email is
16 @opayq.com; correct?

17 A. Yes.

18 Q. And in your professional endeavors, you have run into those
19 type of emails before, opayq emails, haven't you?

20 A. I have not.

21 Q. Have you ever run into masked emails?

22 A. Yes.

23 Q. And masked emails are emails that show that they mask the
24 true email of an individual and it gets forwarded from the
25 masked email address to the actual email address; correct?

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La Grange - Cross

1 A. Yes.

2 Q. And in your experience, there's been people who have used
3 that when they don't want their identity to be found; correct?

4 MR. BURNETT: Objection.

5 THE COURT: Overruled.

6 A. Yes.

7 Q. And you've also, in your experience, found that people use
8 those emails when it doesn't really matter whether they want
9 people to find their identity; correct?

10 A. Yes.

11 MR. TALKIN: I now want you to go to -- can we go to
12 page 3 of the exhibit. If we could highlight the middle under
13 "travelers."

14 Q. You see there under this section "travelers," there's a
15 name, Avraham Eisenberg?

16 A. Yes.

17 Q. So it's fair to say that the individual that's traveling
18 here is not masking his identity in this reservation, is he?

19 A. Other than the email address with the masked email.

20 Q. Right. Other than the -- but it really doesn't make a lot
21 of sense to -- if your intention is to hide your email, your
22 name, it doesn't make a lot of sense to use a masked email for
23 that purpose and then decide to travel in your own name, does
24 it?

25 A. Correct.

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La Grange - Cross

1 MR. TALKIN: I'm sorry, Mr. Smith. If we could go
2 back to the top of the first page and highlight the "to,"
3 "from" again.

4 Q. The date that this reservation -- the time and date that
5 this reservation was confirmed by email and made was on October
6 12th, 2022; correct?

7 A. Yes.

8 Q. At 2:30 p.m.?

9 A. Yes, UTC.

10 Q. UTC. And I know this is going to sound like a silly
11 question, but that is certainly after October 11th of 2022;
12 correct?

13 A. Yes.

14 MR. TALKIN: I now want to go to 610. If we can just
15 look at the date, the top.

16 Q. And the date here, this is when -- I think you described it
17 as the return flight of Mr. Eisenberg was booked; correct?

18 A. Yes.

19 Q. And that was booked on 12/20/2022; correct?

20 A. Correct.

21 Q. And you're aware that Mr. Eisenberg was arrested at the
22 airport in Puerto Rico on 12/26/2022; correct?

23 A. Yes, according to the stipulation, yes.

24 Q. According to the stipulation.

25 MR. TALKIN: I just want you to go halfway down the

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La Grange - Cross

1 page, and you go to booking details, please.

2 Q. You see there, the passenger's name is Avraham Eisenberg?

3 A. Yes.

4 Q. Again, not concealing his identity; correct?

5 A. Correct.

6 Q. Also giving the FBI a six-day heads up that he's coming
7 back?

8 A. I don't know exactly what he was thinking, but --

9 Q. Certainly a possibility, isn't it?

10 A. Yes.

11 MR. TALKIN: And then I want to go to page 3, the
12 payment methods. Highlight that, payment details.

13 Q. Again, this was paid with a Visa credit card?

14 A. Yes.

15 Q. During your investigative duties, you have found that
16 you're able to find credit card records pretty easily?

17 A. Generally, yes.

18 Q. And the credit card, name of the credit card holder here is
19 Avraham Eisenberg?

20 A. Yes.

21 MR. TALKIN: If we can go to 604, please.

22 Q. And this was the cancellation of the flight you talked
23 about earlier; correct?

24 A. This is the initial booking.

25 MR. TALKIN: I'm sorry. I looked at the wrong -- 612.

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La Grange - Cross

1 Thank you for correcting me.

2 Q. This is the cancellation of the flight that you talked
3 about earlier; correct?

4 A. Yes.

5 Q. And this was done on October 23rd of 2022?

6 A. Yes.

7 Q. And the email it was sent to is the same opayq.com?

8 A. Yes.

9 MR. TALKIN: And let's go to page 2.

10 Q. There you have the traveler details?

11 A. Yes.

12 Q. And our traveler's name is Avraham Eisenberg?

13 A. Yes.

14 MR. TALKIN: Can we go to 117A, please.

15 Q. Before I ask you these questions, I'm going to warn you
16 that my copy does not have the numbers down the left, so I'm
17 doing my best, but if I miss by one, please, let me know. I
18 just want to look at No. 9. That's an entry that you talked
19 about on direct examination for Switchboard?

20 A. Yes.

21 Q. If you look to the right, it says,
22 <https://switchboard.xyz/explorer>. Do you see that?

23 A. Yes.

24 Q. That indicates that that search was done through the
25 Switchboard explorer; correct?

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La Grange - Cross

1 A. I don't know.

2 Q. Can you tell from that entry whether or not the person who
3 did that search looked at the terms of service for Switchboard?

4 A. I don't know.

5 MR. TALKIN: If we could go to two down.

6 Q. Same question, can you tell whether the person who did that
7 search looked at the terms of service for Switchboard?

8 A. I don't know.

9 Q. And then No. 13, that's something called a risk calculator
10 Mango Markets. Do you see that?

11 A. Yes.

12 Q. And that's on the same list of documents you talked about
13 before or website from docs.mango.markets? Do you see that?

14 A. Yes.

15 Q. Do you know what the risk calculator is?

16 A. No.

17 MR. TALKIN: If we can go to 120, please. I think
18 No. 4.

19 Q. Same question, can you tell whether that individual looked
20 at the terms of service of Switchboard when they did that
21 search?

22 A. I don't know.

23 MR. TALKIN: And then let's go down to, I think it is
24 18.

25 Q. And that's another search for risk calculator; correct?

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1 A. It appears so, yes.

2 Q. And that's dated 10/11/22 at 2:15 p.m. UTC time?

3 A. Yes.

4 MR. TALKIN: Nothing further. Thank you.

5 THE COURT: Any redirect?

6 MR. BURNETT: No, your Honor. I'm not 100 percent
7 sure if I actually offered 610. So just in case, the
8 government offers 610 right now, which we showed.

9 MR. TALKIN: No objection.

10 THE COURT: 610 will be admitted, if it wasn't.

11 (Government's Exhibit 610 received in evidence)

12 Thank you very much, Ms. La Grange.

13 THE WITNESS: Thank you.

14 (Witness excused)

15 THE COURT: Does the government have any further
16 witnesses?

17 MR. BURNETT: No, your Honor. The government rests.

18 THE COURT: Members of the jury, we are 11 minutes
19 late, so I apologize for that, but we are done for the day.
20 We'll be back here on Monday at to start at 9:00 a.m. We are,
21 as I anticipated, on track at least, but we'll take care of
22 some matters and be back here on Monday. And thank you very
23 much. Have a great weekend. And again, thank you so much for
24 your hard work and diligence thus far. Really appreciate it.

25 (Continued on next page)

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1 (Jury not present)

2 MR. TALKIN: Your Honor, during the government's
3 direct, there was pieces of evidence that had been objected to
4 previously. I did not want to reiterate those others. I said
5 no objection. I just want the record to be clear that our
6 prior objections are standing, we just don't object again in
7 front of the jury.

8 THE COURT: And to be clear, you mean the prior
9 objections that had been overruled; right?

10 MR. TALKIN: Correct, the ones that were fully vetted
11 by the Court and overruled.

12 THE COURT: Okay. Understood.

13 Anything further?

14 MR. DAVIS: Just a couple of more logistical
15 questions, if now is the time, if the Court's okay with that?

16 THE COURT: Why don't we -- does it make sense to take
17 that up after the motions, because I know, Mr. Klein, you asked
18 for some time and I don't want to keep us here too late. So
19 why don't we --

20 MR. KLEIN: Can you give me -- we may be ready.

21 THE COURT: While we're doing that, Mr. Davis.

22 MR. DAVIS: Just a few matters, your Honor.

23 The defense yesterday said that they were going to
24 call Mr. Sheridan as a witness on Monday. We'd ask the Court
25 to inquire about the status of 26.2 material and any

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1 demonstratives or exhibits they intend to introduce to
2 Mr. Sheridan.

3 And then there's a couple other logistical matters of
4 that. We haven't received anything in a few weeks from the
5 defense about what his prospective testimony will be. The
6 government obviously has a notice, the third supplemental
7 notice as governed by this Court's rulings on the motions in
8 limine. So we would be strictly policing that, his testimony.

9 And then I have one more issue, unless the Court has
10 questions about that.

11 THE COURT: Mr. Klein.

12 MR. KLEIN: We're aware of our obligations. We have
13 and will continue to comply with them in terms of 26.2 and the
14 other things. I don't have anything to say other than that,
15 your Honor.

16 THE COURT: Okay. So, is there any further inquiry,
17 Mr. Davis? I think he said to the extent they have relevant
18 materials, they will furnish those to the government. If the
19 government has an objection because they have missed a
20 deadline, then you will let me know.

21 MR. DAVIS: That's fine, your Honor. Thank you.

22 MR. KLEIN: Your Honor, we have one or two things
23 before we get to the Rule 29. We just need 15 minutes. So
24 should we take up our few things after the Rule 29 or would you
25 like to hear them now or what's best for the Court?

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1 THE COURT: I'm happy to proceed here. If you want to
2 take the time to prepare, then that's fine.

3 MR. KLEIN: Could we have 15 minutes, your Honor?

4 THE COURT: Yes, we'll come back at 3:00.

5 MR. KLEIN: Thank you, your Honor.

6 (Continued on next page)
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1 THE COURT: Please be seated.

2 All right. Mr. Klein, do you have an application?

3 MR. KLEIN: Yes, your Honor. One quick question
4 before we start, Mr. Greenspan is going to do the Rule 29
5 motion. I understand your Honor was holding back a ruling.
6 Maybe I have it wrong but about the switchboard terms of
7 service till after Mr. LeGrange testified and we were just
8 wondering if you had reached a ruling on that.

9 THE COURT: Do you want to renew?

10 MR. KLEIN: We want to renew or application to keep
11 out of switchboard terms of service and also the related
12 testimony. They did not establish the connection and any
13 connection to our client at all. The only thing they offered
14 in through Ms. LaGrange was visit to a website
15 switchboard/explorer.PYZ. The terms of service are not listed
16 on this link. They don't pop up but they didn't have any
17 evidence to show one way or the other what that indicated other
18 than switchboard/explorer, which does not say terms of service.
19 So is there is no evidence tying my client, Mr. Eisenberg, to
20 those terms of service and Mr. Hermida's testimony provides
21 none either. So we would ask that those be excluded.

22 THE COURT: Okay. Mr. Burnett.

23 MR. BURNETT: Mr. Hermida testified. And the terms of
24 service made clear that they applied to switchboard users and
25 also people who visit terms service. Special Agent LaGrange

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1 put forward, it was clear that Mr. Eisenberg visited the
2 switchboard website numerous times. So they clearly applied to
3 him. I think the jury could draw the inference that he either
4 viewed them or he didn't care about them and even if he didn't
5 care them, that itself would be relevant to the rebutting -- on
6 Mango was somehow relevant to Mr. Eisenberg's state of mind. I
7 think it goes to a broader materiality point about marketing
8 expectations of what we would expect from a switchboard Oracle.
9 How it would be used and whether it would or would not be
10 manipulated because it is a public document that any user of
11 Mango Markets or otherwise could look at to see and understand
12 what to expect about what was an appropriate use of that
13 Oracle.

14 THE COURT: And for that second argument is it focused
15 on mother-in-law, let's assume for a moment that there was no
16 testimony from Mr. Hermida about his involvement in setting up
17 the perpetual and how it was going to be priced. It happened
18 to be however, that switchboard was the other platform that was
19 going to be used. And separately, Mr. Eisenberg used the
20 platform however, so just on the materiality point, is that
21 enough for, are you still able to bring in the switchboard
22 terms of use?

23 MR. BURNETT: We think materiality is enough to bring
24 in the question is what would a reasonable person in the shoes
25 of Mango Markets or its users expect when they're interacting

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1 with the Mango Markets's platform? And because the switchboard
2 Oracle is the Oracle that is used to get the price on Mango
3 Markets platform, the public terms of service about how
4 switchboard Oracles are used, should inform what a reasonable
5 person using Mango Markets or Mango Markets itself would expect
6 of that Oracle. So I don't think we need specific testimony
7 for a user or Mango Markets witness.

8 Yes, I looked at this terms of service to establish
9 that if it was like a private terms of service like a private
10 convert station that would be different story but because
11 Mr. Hermida testified this is a public document, that makes the
12 difference there.

13 THE COURT: And also would potentially go to the
14 broader argument that for lack of a better term, Mango Markets
15 was sort of like the wild west. There was nothing governing
16 anything of this. Well, part of that landscape included the
17 other platforms that were feeding in Mango Markets and if those
18 had terms of service that were more similar to conventional
19 markets, then that bears on materiality, possibly, the basic
20 questions of manipulation and to rebut the conditions that's
21 been raised concerning lack of terms of service on Mango
22 Markets itself.

23 MR. BURNETT: That's right. And to that point
24 Mr. Hermida testified that he is actually involved in creating
25 that or Oracle for Mango Markets and this terms of service

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1 issue the manipulation and manipulation practice was in fact
2 one of the reasons they chose for FTX and AscendEX Oracle.

3 THE COURT: Mr. Klein, anything further?

4 MR. KLEIN: Just that the user is Mango Markets, not
5 in the read of terms use, I believe you are right. There are
6 terms used. That's user. It can't be like Mango Markets used
7 switchboard Oracle and then that -- things in Mango Markets
8 that people saw but the user in this case is Mango Markets.

9 THE COURT: Yeah. This is just a point about the
10 document because I know that Mr. Greenspan focused on language
11 that defined user in the terms of use.

12 And Mr. Burnett, I think you had indicated that it
13 actually applies more broadly than that.

14 MR. BURNETT: We could pull up the document right now.

15 THE COURT: Do you want to just pull it up, if you
16 can?

17 MR. BURNETT: Yes. I think it's 1512.

18 (Pause)

19 MR. BURNETT: Third paragraph in the all caps.
20 They're all caps, third paragraph. By using this web set or
21 our services you accept and are bound by these terms and
22 conditions.

23 The next paragraph says, you may not use our website
24 or services and then -- the way they're defining "users" just
25 doesn't show up.

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1 THE COURT: Is there an actual definition of upper
2 case user.

3 MR. BURNETT: If you scroll down further, let's see.
4 It only defines user as counter-party to the agreement.

5 THE COURT: Okay.

6 MR. BURNETT: But if the -- look at the second
7 paragraph it says by use of this website its users agrees and
8 accepts to be bound by the terms of --

9 THE COURT: Okay. Understood. So I will overrule the
10 objection for the reasons explained by the Court.

11 And, Mr. Burnett, I believe it's relevant to several
12 issues in this case in addition to potential bearing on
13 Mr. Eisenberg and goes to materiality. It goes to potentially
14 to what manipulation would be in this context as well as to
15 rebut the defense that has been repeatedly raised that Mango
16 Markets itself in isolation had no terms of service during the
17 relevant times in question and that it's relevant to show that
18 other platforms that were related to the transactions that are
19 at issue in this case did have terms of use that would have
20 applied in connection with Mr. Eisenberg's conduct.

21 So for those reasons, I don't believe that the
22 prejudice effect or confusion to the jury or any of the other
23 factors identified under Rule 401 would substantially
24 outweighed the probative value of the document and so remain
25 admitted.

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Anything further before Mr. Greenspan?

MR. GREENSPAN: Ready to proceed.

THE COURT: Okay.

MR. GREENSPAN: Thank you, your Honor.

The defense moves under Criminal rule 29(A) for a judgment of acquittal. That rule dictates that upon a defendant's motion, the Court must "enter a judgment of acquittal of any offense in which the evidence is insufficient to sustain a conviction. When evaluating Rule 29 motions the Court "must view the evidence in the light most favorable to the government, crediting every inference that could have been drawn in the government's favor. That's United States v. Torres. 604 F.3d 58, Pin site 66 Second Circuit 2010.

Initially, I'll like to start with Counts One and Two and start with sort of the jurisdictional issue of this EA, which applies to both. So with respect to those, I should say with respect to Count One, the Court has already ruled that USDC is not a commodity and so therefore the government's contract of sale theory as to jurisdiction for Count One fails.

THE COURT: If I could just ask you to pause there because I think at the end of the trial day yesterday, I may have misattributed a position to you and I just want to make sure that things are clear because I think probably because it was late in the day, I said your position is USDC is a commodity and then I think you may have said also because it's

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1 late in the day, correct. But I take it that your position has
2 been that USDC is not a commodity.

3 MR. GREENSPAN: Yes, your Honor. If I said that, that
4 was due to --

5 THE COURT: I apologize for that but I want to make
6 sure the record is clear.

7 MR. GREENSPAN: Absolutely. For that reason, I think
8 we also discussed in our position that the RICO commodity
9 transaction is no longer an issue for the same reason.

10 THE COURT: I apologize. Please proceed.

11 MR. GREENSPAN: Thank you, your Honor.

12 So because there is no contract of sale theory the
13 jurisdictional theory for both Counts One and Two is now
14 essentially the same and that is that the Mango Professionals
15 were swaps. The term "swaps" as the Court knows and has
16 discussed is defined at 7 U.S.C. 1A Subparagraph 47. The
17 government has provided two theories under Subparagraph 47 for
18 why it believes there are swaps, the Mango Markets. None of
19 those, we submit, was at all proven and there's insufficient
20 evidence as to both at this point.

21 The first is ii, which talks about payment in the
22 event of a financially consequential occurrence or not. The
23 perpetual by its very name exists indefinitely. There is no
24 occurrence or nonoccurrence that's been proven. Unlike
25 traditional futures contracts there is not a specifically

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1 contemplated occurrence. There's no expiration. So their very
2 essence, what they are, is antithetical to the definition in
3 subparagraph ii.

4 Turning to the other theory, which is under iii 7
5 U.S.C. 7A47 iii. The perpetuals also failed to meet that
6 definition. That definition involves a transfer of financial
7 risk of an underlying asset without the exchange of that asset.

8 So starting at the end first, the underlying assets
9 here according to the government's theory is the Mango USDC
10 perpetual. The USDC portion of that is exchanged. At least
11 the ownership interest of it is exchanged and therefore that's
12 one reason why it doesn't meet the element other the definition
13 under subparagraph iii.

14 The second goes to the testimony that was elicited
15 from Dr. Mordecai yesterday. He stated that Mr. Eisenberg had
16 no exposure to the market. In other words, he had no risk
17 because he is party to both the long and the short sides of the
18 perpetual. If there is no transfer of risk, then and there's
19 been no testimony otherwise, then it can't be a swap. So it
20 fails for that reason too.

21 But even if the government could meet one of these two
22 prongs, it's theory under the perpetual would still fail to be
23 a swap for CEA because the government hasn't met its burden to
24 show that it wasn't a security based swap, one of the specific
25 exceptions. And that's at 7 U.S.C. 1A 47x.

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1 The perpetual here is based on the value of either a
2 single security, mainly Mango or on the value of a mix of
3 securities and narrow based securities indices and securities
4 indices and securities based swaps are discussed in CFTC, the
5 Arkegos capital 2023 Westlaw 622, Westlaw 2022.

6 So, initially, the government -- in this case I'm
7 referring SEC in the complaint against Mr. Eisenberg -- has
8 taken the position that Mango is a security and that's as
9 applied to the very acts in this case. It's brought that case
10 in this courthouse. It would be fundamentally unfair for the
11 government to prosecute Mr. Eisenberg in two cases on the basis
12 of fundamentally and diametrically opposed positions.

13 Moreover, Mango is a security because it meets the
14 elements of the test for what a security is. And under the
15 definition of investment contract as discussed in SEC v. Howe
16 328 U.S. 293. Mango is a --

17 THE COURT: You are thinking about whether it's a
18 security or not, that's the portion of the very long definition
19 of security that you would focus the Court on, investment
20 contract?

21 MR. GREENSPAN: Yes.

22 THE COURT: Okay.

23 MR. GREENSPAN: Mango is a common enterprise. Mr. --
24 described an ICO in which \$70 million was raised and placed in
25 an insurance fund for the use of that enterprise. Mango had a

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1 light paper that was discussed at various times. It's also in
2 the record, along with other documentation, at GX 1011. That
3 was disseminated publicly. It was used to educate and attract
4 the investing community. And it was done to encourage people
5 to buy Mango as part of the ICO. And afterward that was
6 successful. Tens of millions of dollars were raised.

7 Numerous witnesses, including Mr. Case describeed the
8 manner in which investors bought Mango and they did so to
9 benefit themselves through the rise in the value of Mango and
10 they did so on the back of the work of others. Mr. Casey,
11 along with number of others, described how they invested in
12 Mango but they didn't actually work for Mango.

13 So Mango Markets was built by a number of people but
14 they were referred to a Mango contributors. Two of them
15 testified. Mr. Shites and Mr. Smith and they allowed investors
16 buy the Mango tokens on both the primary and secondary
17 exchanges, and those people speculated on the price of Mango.

18 No work or effort was required by those Mango
19 purchasers. It was purely -- there is no testimony or wise.
20 There's been no evidence in the record that anyone, let alone
21 the broad investing public, purchased Mango for any purpose
22 other than as investments, and certainly not for any government
23 rights. Not a single witness has testified about any vote of
24 consequence and any use of government rights by them or by
25 anyone else. The only testimony about why people brought Mango

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1 and got involved in Mango was about their wish to make money.

2 Because Mango is a security the perpetual was a
3 security based swap. The government has insinuated at least,
4 if not outright claimed that they believed that Mango is
5 therefore a mixed swap. And the definition of mixed swap is
6 under subparagraph 47(D) but there's been no evidence of this.

7 Yesterday the government pointed to the funding rate
8 in its discussion with the Court. But the funding rate does
9 not make the security based swap a mixed swap because the
10 funding rate is a narrow based security index. The definition
11 of narrow based security index is 7 U.S.C. 1A35. A narrow
12 based security index is specifically carved out as something
13 they can cause a security based swap to become a mixed swap.

14 THE COURT: Can you give me a little bit more detail?
15 So "narrow based security index", where do I look to understand
16 what that term means?

17 MR. GREENSPAN: We should start with index. What is
18 an index? An index is a group of securities including any
19 interest therein or based on the value thereof. And that's
20 defined in the securities laws in 15 U.S.C. 78 (C) (A) (68)
21 (E). And what makes an index narrow based is that it has nine
22 or fewer component securities. The funding rate clearly
23 qualifies. It's based on the value of the Oracle settlement
24 price. That Oracle settlement price is based on the value of
25 Mango. And as discussed, Mango's security.

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1 The other basis for the funding rate is the mid price
2 of the bids and the asks for Mango Perpetual itself. And add
3 as discussed, Mango perpetual is a securities based swap.
4 Securities based swaps are defined as securities under the same
5 statute, 15 U.S.C. 78 (C) (68). So because the funding rate is
6 an index it's based on two securities it's narrow based
7 security index and it cannot make the perpetual a mixed swap.

8 The government's other argument yesterday was that the
9 perpetual is based on the Oracle settlement price. That too is
10 a narrow based securities index. The same definition of index
11 applies. Mr. Hermida testified that the Oracle is known as an
12 index broadly in the community and it fits the statutory
13 definition as well. It reports the price of Mango, which as
14 discussed in a security and it does so on three different
15 exchanges. So it's an index. It's composed of security and
16 there are fewer than nine of them. It fits the definition.

17 Finally, the government has suggested that the
18 perpetual depends on the value of USDC. There's been no
19 evidence of that and all the evidence has been not contrary.
20 The only effect USDC has on the purpose is that it's settled
21 and that's it.

22 The government's own witnesses, including Mr. Hermida
23 and Dr. Mordecai made clear that USDC is nothing more than a
24 medium of exchange. At times they confused it with a dollar.
25 They all basically said that is the equivalent of a dollar.

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1 Dr. Mordecai said today he has studied it and that the relevant
2 time there was essentially no difference between U.S.C. and the
3 dollar. Mr. Hermida testified that it could be exchanged at
4 any time for a dollar if anyone had a circle account.

5 So the value of the perpetual depended on Mango.
6 That's security depended on that going up and down but it
7 didn't depend on the value of USDC in any discernable way.

8 THE COURT: If it's based on USDC, would you concede
9 that it's a mixed swap or do you have an argument even if the
10 perpetuals are based on USDC?

11 MR. GREENSPAN: It has to be based on the value of
12 USDC, which is a slightly different thing, but I do have one
13 argument about that as well.

14 THE COURT: Okay.

15 MR. GREENSPAN: But one point I want to make just so I
16 don't forget, I want to address this government theory about
17 selling USDC into the market, which the defense finds strained.
18 We think it would be like saying that in order to buy a cup of
19 coffee this morning you sold dollars. The coffee really don't
20 intend on value of your dollar. It depends on the value of the
21 coffee.

22 So to the Court's point -- and this comes back to a
23 point I made about the definition of swap to begin with -- the
24 ownership in USDC is exchanged. And so the USDC doesn't really
25 fit in the definition of swap to begin with. So under the

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1 general definition of swap, something that is exchanged cannot
2 be the basis of a swap and it cannot be the basis of a mixed
3 swap either.

4 Judge Oetken pointed out in the Arkegos case that I
5 cherry-picked a short time ago that a mixed swap must have a
6 reference that is subject to CFTC authority, that the USDC is
7 not such a reference and the perp has no other such reference.
8 Because there is no jurisdictional basis for the application of
9 the CEA the defense believes that Counts One and Two should be
10 dismissed.

11 Turning to -- I am going to take these a little bit
12 out a order and start with the commodity manipulation. We
13 think that's the most straightforward count for dismissal at
14 this time. The government has discussed the commodities
15 manipulation count on several occasions that being akin to an
16 antitrust statute, very powerful but also very narrow. And I
17 say it's very powerful because the intent requirement is very
18 particular and it's very different than the other two statutes
19 charged here and in general in the criminal law.

20 The government has offered no proof regarding the
21 manipulation of the market price of the perpetual. The market
22 price of the perpetual is the price at which one can buy and
23 sell the perpetual on Mango Markets. And there's absolutely no
24 question in the case law that is what's required for market
25 manipulation. Instead, the government's case has full focused

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1 on the purported manipulation of the settlement price and
2 that's clearly insufficient.

3 There's not been a single witness who discussed if any
4 detail any changes to the price of the perpetual, the market
5 price that is, on Mango Markets. The only evidence at all of
6 what the price even was came if through Agent DeCapua
7 yesterday. It was mentioned only briefly. Initially it seemed
8 that Agent DeCapua wasn't sure what that price was and he
9 certainly had no substantive discussion about, how it changed
10 or what caused that.

11 There's also been plenty of evidence that the
12 settlement price, the Oracle price, that is, and the market
13 price are different. And a number of witnesses have discussed
14 the funding rate. And the purpose of a funding rate which is
15 to establish that these two prices which are different and can
16 spread apart and to try to get them to narrow. That is the
17 entire purpose of the funding rate. It's a key component of
18 the perpetual in one way in which the perpetual is different
19 from a normal futures contract. And so the government's focus
20 entirely on the Oracle settlement price has essentially been
21 irrelevant to this count.

22 The Second Circuit has defined the price as a market
23 price for a market manipulation claims that uses that term in
24 ATSI communications v. Shar 497 F.3d 87. And there's been two
25 case that have focused specifically on the distinction between

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1 the settlement price and market price and we'd like to point
2 the Court to those.

3 The first is Vitanza v. Board of Trade of New York.
4 It's cited at 2002 Westlaw 424, 699. That's an S.D.N.Y case
5 from 2002. The second is Three Crown Limited Partnership v.
6 Caxton, 817 F.Supp 1033.

7 Vitanza in particular discussed the distinction and
8 rejected a CEA claim based on settlement price. three Crowns
9 involved the distinguishing the alleged manipulation of
10 Treasury bill and their underlying treasury notes. But the
11 upshot of both cases is the same. The focus has to be on the
12 market price of the supposed commodities or swap. And that
13 distinction applies --

14 THE COURT: Can you just crystalize it for me what the
15 difference is. And are you saying that it may be that the
16 market price was altered as a result of what the government is
17 alleging but they haven't put in evidence of that? Or are you
18 saying just it's just a matter of like undisputed fact that the
19 market price was not altered? Can you just help me understand
20 the difference between the two prices and I want to make sure I
21 understand your argument.

22 MR. GREENSPAN: Sure. So the settlement price is the
23 Oracle price. The settlement price is that price that we saw
24 Switchboard generate as a result of the -- there was a little
25 more complicated mathematically but the medium of the price FT

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1 and that price is reported and is used to settle he Mango
2 perpetual. So it affects the value but not the price itself.
3 The market price of the Mango Professional is the price at
4 which one can by contracts of the Mango Professional and Mango
5 Markets.

6 THE COURT: That's the distinction and that is the
7 latter thing, the government simply did not put in any evidence
8 as to that price being affected by the defendant's conduct.

9 MR. GREENSPAN: I think there is -- I start by saying
10 I think there is a brief mention of it in Agent DeCapua's
11 slides. The testimony was unclear as to whether Special Agent
12 DeCapua really even understood what it was saying in the
13 slides. So I wouldn't go as far, I think it's too bold to --
14 so there is no evidence at all. I think looking at the
15 elements helped here and I specifically, the fourth element and
16 this is the specific intention to cause an artificial market
17 price, this is the fourth element in the Amarant test. Amarant
18 is 730 -- all of the evidence in this case suggested that
19 success of Mr. Eisenberg's alleged trading didn't depend on the
20 market price at all. The value of his positions depended
21 entirely on the settlement price. So there would be and could
22 be no intent to manipulate the market price. It didn't matter
23 to him at all. That, I think, is undisputed.

24 He simply didn't care about it. And one way that we
25 can see that is and this came up with Dr. Mordecai today. He

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1 never sold any of the perpetuals so. He didn't profit off of
2 that. Dr. Mordecai spent a fair amount of time looking for a
3 slide in which any of those contracts have been closed out, and
4 he wasn't able to find one.

5 So while there was some lack of clarity with Dr.
6 Mordecai initially on whether he understood the difference
7 between the settlement price or the Oracle price and market
8 price and candidly there's been a lot of confusion over how
9 those terms have been defined and Dr. Mordecai was very
10 reluctant to use the word "market price", he preferred
11 "prevalent venue price" but I think he was referring to the
12 same concept. Prevailing venue price; thank you.

13 And ultimately, I think he did agree that those prices
14 were different and I think the evidence shows that they have to
15 be at least potentially different. That's the entire reason a
16 funding rate exists. The funding rate exists to address the
17 problem of those two prices being different and to try to close
18 the gap.

19 Mr. Jain, the government's expert, discussed that as
20 the purpose for funding rate. So that came in through his
21 testimony. So just summing up on that and coming back to the
22 Amarant test, because there's been this dearth of testimony at
23 all or evidence about the market price, all four of the
24 elements have not been met.

25 The first is that there's been no testimony about

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1 Mr. Eisenberg's ability to cause a different market price.
2 There's been no testimony that there was an artificial market
3 price. The government never established how the market price
4 changed. Even if they showed that there was a different market
5 price, they didn't establish that it was artificial in some
6 way, did not reflect forces of supply and demand.

7 Dr. Mordecai who seemed to be their expert on issues
8 manipulation, didn't address it at all. It wasn't in a single
9 one of his slides. And similarly, the government failed to
10 prove that if the market price was artificial, that
11 artificiality was or could have been caused by Eisenberg.
12 There was no evidence at all about that.

13 So we believe that all four of the elements of Amaranth
14 and in particular, the specific intent element of Amaranth, all
15 failed and Count Two should be dismissed.

16 We also believe there's no reasonable expectation
17 that's been established of a non-artificial price. But
18 primarily we rely on this issue of the market price. So
19 turning to the fraud counts and I'll try to take those in
20 general together. That's Count One, the commodities fraud
21 count and Count Three, which is wire fraud. And the key case
22 for us in this presentation is United States v. Regis 490 F3rd
23 208. I know the government has written on that and the Court
24 has had some mission on that case. And it really involves the
25 lack of ability to make a decision in general under a contract

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1 theory that binds a party or potential victim and makes any
2 misrepresentation or deception not material. So it's a
3 materiality issue. But let me take these first by what we
4 think is the government's theories of deception.

5 The first one is an amalgamation of location and
6 identity. This is the theory that Mr. Eisenberg
7 mis represented where he was logging-in from and what his
8 identity was. Obviously, there was no requirement of any kind
9 of identity as Mango Markets. The only identity potential
10 misrepresentation was related to FTX and the use of a nominee
11 account. There was plenty of evidence of why that wasn't
12 deceptive, including that FTX, there was no evidence that it
13 cared or that in any way this misrepresentation affected
14 anything that it would have or could have done. And there was
15 also no evidence that these misrepresentations affected any of
16 the potential victims. There is no testimony about and there
17 was no documentation.

18 There was also plenty of evidence the other way that
19 U.S. users routinely used basically all of these exchanges that
20 at least purported to ban or block U.S. users and there was
21 testimony about VPNs and the use of those. So there really was
22 no evidence of materiality with regard to location and
23 identity.

24 Also, specifically with the issue of identity, we want
25 to turn the Court's attention to Regent's Office Supply. That

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1 case is at 421 F.2d 1174. It's a Second Circuit case. And the
2 Pin site I believe is 1180. Basically, that case stands for a
3 counter-party getting exactly what it bargained for. There is
4 really in evidence that FTK or AscendEX lost anything, that
5 they didn't get what they bargained for or was misled by these
6 supposed misrepresentations.

7 As to Mango Markets, the contract itself was
8 permission-less. So that was a topic that came up with
9 multiple witnesses. Mango Markets didn't ask for and in a sort
10 of robotic way didn't care about the identities, location,
11 really or anything else about a potential user. So this issue
12 of location and identity had no effect, whatsoever, on Mango
13 Markets. And the Mango Markets's users all knew that as well.

14 Turning to the second form of deception, an obligation
15 to repay or maintain collateral, there's been no evidence of a
16 requirement of that. And one thing I should stop here and note
17 here is from the defense's perspective, each of the four
18 theories of perception is a theory of omission. And while
19 omissions of course are valid theories of deception, they do
20 require something a little more than just affirmative
21 misrepresentation. That is either a duty or a scenario in
22 which that fact omitted makes something else or other things
23 that were convoyed, makes the omission somehow material. And
24 in the case of the obligation to repay, there was no evidence
25 of any such requirement or anything that would have triggered

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1 this sort of factual duty to disclose anything about repayment
2 or collateral.

3 I would like to point the Court to Government Exhibit
4 1011 which was discussed at some length today, and that's a
5 section of the Mango Markets documentation that deals with
6 liquidation and it set out a stepwise series of events of
7 exactly how Mango Markets deals with what they call bad debt.
8 And it goes through the liquidation of the collateral. Then
9 they turn to the insurance fund. And then if that fails, it
10 goes to socialized losses. There's no discussion there or
11 anywhere else on Mango Markets about a requirement to repay.
12 There's also no discussion there or anywhere else about a
13 requirement to maintain collateral.

14 So there were individuals who gave subjective
15 hypothetical views of why these sorts of things were relevant
16 to them but we believe that that testimony was irrelevant
17 because there was no obligation that was violated to make their
18 particular view in the hypothetical at all meaningful,
19 actionable and material. And on that point, there was no
20 evidence that anyone could have or would have done anything
21 differently if Mr. Eisenberg had disclosed anything about his
22 repayment intentions or collateral maintenance intentions.

23 The third theory of misrepresentation involved, I
24 think what the government called, the artificial creation of
25 perpetuities. And that is Mr. Eisenberg taking both the long and

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1 the short. Frankly, the defense isn't really certain who the
2 government believes was actually deceived or could have been
3 deceived by this. The actual positions themselves were fully
4 disclosed and available for view on the Mango Markets's
5 website. No witness testified about being deceived by this or
6 being potentially deceived by this or about any decision they
7 could have or would have made or any influence that the same
8 individual being on both sides of the perpetuals, any influence
9 it had on them and there's also no evidence at all that it
10 moved the price. So which goes back to the market price
11 discussion we had earlier. But there's really no materiality
12 argument that we are aware of for that third misrepresentation
13 on the artificial creation of the perpetuals.

14 Then the fourth and final theory is the market
15 manipulation theory. Again, we come back to Regis and there
16 was no deception of the contract. The contract -- and this is
17 the smart contract on Mango Markets -- believed it owed
18 Mr. Eisenberg \$100 million at time of his first withdrawal
19 because it believed it did under its own terms. So any
20 information that he provided to it for its purposes was true.
21 The contract had no authority not to execute. It was a smart
22 contract. It was permission-less and it was bound to do
23 exactly that which it did. So the notion that it was
24 materially altered in some way or could have been is just
25 unsupported by the evidence.

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1 So those are the four theories of deception.
2 Generally, across both the commodities fraud and wire fraud, we
3 think this was insufficient evidence of knowledge, willfulness
4 and fraudulent intent, as we've discussed at length multiple
5 times, there was no terms of service on Mango Markets and we
6 don't think that there's been sufficient evidence to show for
7 either of those two statutes which are slightly different but
8 mostly similar that the requisite intent was met here.

9 And just one final point on the commodities fraud
10 count, we also don't believe that the government presented
11 sufficient evidence that the Mango spot trading was in
12 connection with the swap and we have discussed and the Court
13 has discussed a length, the Chemical Bank case which is we
14 believe the controlling case on that.

15 So one final point I'd like to make about venue, the
16 defense believes that there's been insufficient evidence of
17 venue. The primary evidence we believe has been about
18 AscendEX. AscendEX having an office of sorts in New York
19 through a company called HD, which had a convoluted and unusual
20 arrangement with AscendEX and that seems that a number of
21 employees there had contracts with AscendEX. Although,
22 AscendEX was very clear that it itself it not a U.S. company
23 and it was not a U.S. company and it was very important to it,
24 the servers of AscendEX, there's no evidence that they were in
25 New York. There is no evidence of any wire coming into New

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1 York. And on the wire point as we've discussed with the Court,
2 the wire fraud count specifically requires a wire. So that's
3 the one way in which that count for venue purposes is a little
4 different from the other two.

5 There is some evidence about individuals at AscendEX
6 looking at reports and things of that nature regarding the
7 events at issue. All of that we believe happened after the
8 fact. Venue has to be in furtherance of a charged defense.
9 And so that act in furtherance has to be in the Southern
10 District of New York. And we'll cite Sovoda for that, 347 F.3d
11 41.

12 Turning to two other people who described some
13 connection to New York, Mr. Casey who testified today said he
14 didn't know anything about the trading until after it was over.
15 So we believe that there's nothing that he testified to that
16 was in furtherance of the charged offenses. And Mr. Hermida
17 testified, I believe he lived in New York but also didn't
18 testify to having taken any actions that furthered the charged
19 offenses. And we're not aware of any other evidence relating
20 to Switchboard, including that there were notes in New York we.
21 Don't believe there is any evidence of that.

22 For that reason too, we think that venue is sufficient
23 as to those charges and for all of those reasons, we move for a
24 judgment of acquittal.

25 THE COURT: All right. Thank you, Mr. Greenspan.

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1 Who is going to address the motions from the
2 government side?

3 MR. GREENSPAN: Sorry. One second your Honor.

4 (Pause)

5 MR. GREENSPAN: Thank you, your Honor.

6 THE COURT: All right. Mr. Davis.

7 MR. DAVIS: Thank you, very much.

8 Starting with the standard and I'm happy to field any
9 questions the Court may have because where we are at this stage
10 of the case is the burden is on the defense in this motion and
11 it's a burden that is incredibly high, one that my colleague in
12 our position referenced at the beginning and carries a heavy
13 burden. And this Court must give full the right of the jury to
14 determine credibility, weigh the evidence and draw justifiable
15 inferences of fact. I think what you heard from Mr. Greenspan
16 which are a number of points, of disagreements for the jury.
17 so I have a few points to hit. I mean Mr. Greenspan just
18 outlined a number of issues for us to address but I'm happy to
19 start with the Court's questions if there's something on the
20 Courts mind or if the Court is going to reserve, I'll be very
21 brief

22 THE COURT: Well, the only question I had was on the
23 mixed swap issue because it is related to the jury
24 instructions, as well and so given that it has been now
25 crystalized from Mr. Greenspan what their position is on that

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1 issue, perhaps, you could give me the government's take.

2 MR. DAVIS: Yes, your Honor, briefly. I think this is
3 going to be again in our letter to the Court tomorrow at five
4 p.m. even more crystal than what I'm going to say right now.

5 THE COURT: I understand.

6 MR. DAVIS: Here is where we are. So, Mr. Greenspan
7 ticked off the subsections of 7 U.S.C. I think it's 47(i), on
8 the payment of interest and consequence, our view the funding
9 rate qualifies under that subsection. That's the transfer that
10 happens on a consequence event and it is constantly happening
11 throughout the life of perpetual. As to the transfer of
12 financial risk, that's Mango USD issue that we flagged before
13 USDC. Excuse me. So that's a transfer of risk and MNGO is not
14 actually exchanging hands. So we think we cleared that
15 hurdle -- brings us to the mixed -- again, we are going to get
16 back the Court.

17 THE COURT: Understood.

18 MS. HUANG: I think along the lines of where we were.
19 Yesterday we provided three alternative basis for this issue
20 USDC, the funding rate and the Oracle index based on USDC based
21 securities. We think that goes all qualify, as under the mixed
22 swap analysis and then that's what we intend to argue.

23 THE COURT: Okay. Understood.

24 MR. GREENSPAN: Your Honor, could I just add one more
25 point? We also don't think that it's been proven sufficiently

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1 Mr. Eisenberg at the time of the offense was in the United
2 States. And so we also believe for extra territoriality
3 reasons Rule 29 is appropriate.

4 MS. HUANG: Your Honor, you saw the ticket today
5 booking his flight within hours of the scheme for Puerto Rico
6 and that evidence is beyond a reasonable doubt proof that he
7 was there but it certainly meets Rule 29 standard duty to give
8 to the jury.

9 THE COURT: Understood. The Court will reserve on
10 defendant's motion and will consider it further.

11 Anything else, Mr. Klein, on the defendant's side?

12 MR. KLEIN: Yes. Just a couple quick things, your
13 Honor. One is, as the government asked us, we would ask them,
14 they didn't call Mr. Durairaj. We just want to remind, ask
15 that they, I don't know if they met with him. Something
16 happened that caused them not to call him. But if there is any
17 Brady material or anything we should get in discovery, we
18 haven't received any materials about him some time. We just
19 ask that we're making a discovery request for Brady materials
20 there.

21 The other issue is I think we'll be able to work it
22 out but we have sent them a stipulation related to circle issue
23 we discussed the other day, which is the count suspension. I
24 know I was busy. I'm not saying they need to respond
25 immediately but if we don't reach an agreement on the circle

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1 stip, we would need to call an assistant United States attorney
2 to testify to that fact because she is the one who instigated
3 the suspension and caused it to be -- I just wanted to let you
4 know those are the two we see happening over the weekend for
5 us. We will notify them about our witnesses. We are going to
6 meet with Mr. Eisenberg. Right now we do expect to call
7 Mr. Sheridan on Monday. That continues to be our expectation.
8 He would be our first witness. We are a considering
9 Mr. Durairaj, who is now under subpoena, who would be first by
10 the way if we call Mr. Durairaj. We've agreed to call him
11 first. And then we'll be meeting with Mr. Eisenberg and
12 discussing the possibility of him testifying and we'll notify
13 the parties by Sunday evening, Sunday early afternoon, your
14 Honor. We have to go meet with him. It's not so easy. So
15 that is, I just wanted to give the Court and the government a
16 preview of what's happening.

17 (Continued on next page)

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1 THE COURT: All right. Mr. Burnett.

2 MR. BURNETT: Our witnesses totally understand that
3 they need all the time they need for the call on Mr. Eisenberg.
4 As to the call on the other witnesses, could we get that by
5 like 5 o'clock Saturday as opposed to 5 o'clock Sunday?

6 MR. TALKIN: That's fine. I was speaking about our
7 client when I said that.

8 MR. KLEIN: We're fine with 5 o'clock on Saturday.
9 It's just, for Mr. Eisenberg, we need more time.

10 THE COURT: Mr. Davis.

11 MR. DAVIS: Just very briefly as to the defendant's
12 request as to exculpatory materials as to Mr. Durairaj. I will
13 note I have produced to defense our last meeting notes with
14 him, which I believe was Sunday. And so, they have everything
15 that I have. And my understanding --

16 THE COURT: I just took it as Mr. Klein talking to
17 you. So I wasn't even --

18 MR. DAVIS: I'll sit down.

19 THE COURT: If anyone has an application along these
20 lines, you'll let me know.

21 MR. KLEIN: We just don't talk directly anymore. We
22 just talk to you.

23 THE COURT: So we are going to send you right now for
24 this afternoon the proposed jury charge to what we discussed.
25 There is a proposed instruction on the mix swap issue.

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1 However, it's essentially a placeholder. I understand the
2 parties are going to be putting in papers over the weekend on
3 that particular issue, but take a look at the proposed jury
4 charge. Obviously, if there are other issues, we will address
5 them either before or during the charge conference. You have
6 the proposed verdict form, so let's get back to the Court on
7 that so that we can have a smooth charge conference.

8 And so, in terms of the timing, I think we're still on
9 the same track that we'll either have the charge conference in
10 the afternoon Monday or first thing on Tuesday, and then we
11 should be prepared to proceed with closings on Tuesday.

12 MR. DAVIS: That's our understanding, too, your Honor.

13 THE COURT: If there's nothing further, everyone, have
14 a great weekend and I'll see you on Monday. Thank you very
15 much.

16 (Adjourned to April 15, 2024 at 8:30 a.m.)

17 * * *

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Exhibit No.	Received
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50	750
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817	819
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1601	829
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1603	833
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608	880
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1	1704	881
2	609, 609A	882
3	800, 800A	885
4	502A	888
5	801, 801A	890
6	802, 802A	892
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8	117A through 122A, 123, and 124	894
9	318	899
10	604	901
11	310	904
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